



Agenda
Edmonds Planning Board
COUNCIL CHAMBERS
250 5TH AVE NORTH, EDMONDS, WA 98020

SEPTEMBER 25, 2019, 7:00 PM

LAND ACKNOWLEDGEMENT FOR INDIGENOUS PEOPLES

We acknowledge the original inhabitants of this place, the Sdohobsh (Snohomish) people and their successors the Tulalip Tribes, who since time immemorial have hunted, fished, gathered, and taken care of these lands. We respect their sovereignty, their right to self-determination, and we honor their sacred spiritual connection with the land and water.

- 1. CALL TO ORDER**
- 2. APPROVAL OF MINUTES**
 - A. Approval of Draft Minutes: September 11, 2019
- 3. ANNOUNCEMENT OF AGENDA**
- 4. AUDIENCE COMMENTS**
- 5. ADMINISTRATIVE REPORTS**
 - A. Development Services Director Report
- 6. PUBLIC HEARINGS**
- 7. UNFINISHED BUSINESS**
 - A. Amendments to Chapter 20.70 (NEW 18.55) ECDC Street Vacations
- 8. NEW BUSINESS**
- 9. PLANNING BOARD EXTENDED AGENDA**
 - A. Review Planning Board Extended Agenda
- 10. PLANNING BOARD CHAIR COMMENTS**
- 11. PLANNING BOARD MEMBER COMMENTS**
- 12. ADJOURNMENT**

Planning Board Agenda Item

Meeting Date: 09/25/2019

Approval of Draft Minutes: September 11, 2019

Staff Lead: N/A

Department: Planning Division
Prepared By: Diane Cunningham

Background/History

N/A

Staff Recommendation

Review and approve the draft minutes

Narrative

Draft minutes are attached

Attachments:
PB190911d

SUBJECT TO SEPTEMBER 25TH APPROVAL

**CITY OF EDMONDS PLANNING BOARD
Minutes of Meeting**

September 11, 2019

Chair Cheung called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Matthew Cheung, Chair
Daniel Robles, Vice Chair
Todd Cloutier
Nathan Monroe
Roger Pence
Mike Rosen
Conner Bryan, Student Representative

STAFF PRESENT

Rob Chave, Development Services Manager

BOARD MEMBERS ABSENT

Alicia Crank (excused)
Carreen Nordling Rubenkönig (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER ROSEN MOVED THAT THE MINUTES OF AUGUST 28, 2019 BE APPROVED AS PRESENTED. BOARD MEMBER CLOUTIER SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

Ken Reidy, Edmonds, commented that the Street Vacation Code Amendments will come back before the Board on September 25th. He recalled that City Attorney has stated that the starting point in analyzing conditions is that the City can never be compelled to approve a street vacation but can deny the request at any time for any reason. However, if a proposed street vacation is in the public interest and no property will be denied direct access, he questioned if the City can really deny a request at any time for any reason. He pointed out that City code allows property owners to apply for street vacations, and a fee is required. When an application is made and paid for, he felt it should be processed per the City's code. He said the City's General Code of Conduct states that "*the City's primary function is to provide service to the citizens of Edmonds.*" The City's Code of Ethics says that "*elected officials shall emphasize friendly and courteous service to the public and each other and seek to improve the quality of public service and confidence of citizens.*" He said his hope is that any and all updates to the street vacation code will lead to improvements in the quality of service provide by the City. He questioned if the- City Council can condition a street vacation on the granting of an easement to a third party.

Mr. Reidy recalled that at the Board's August 14th meeting, the City Attorney stated that, as a home rule city, the City has broad powers. He further stated that *"the City doesn't need to point to something that's expressly stated in State Law to authorize its actions; it just can't contradict State Law."* In other words, as long as the City isn't violating the statute, it's good. Mr. Reidy pointed out that State Law clearly says that the ordinance may provide that the City retain an easement or rights, and the definition of retain is clear and simple. He expressed his belief that the City is violating State Law when it does something other than retain. Mr. Reidy agreed that the City has broad powers. However, once the City exercises its broad powers, the code adopted by the City Council must be followed by the City Attorney and City staff. The adopted code must also be faithfully enforced by the mayor.

Mr. Reid recalled that, at the last meeting, he mentioned that the 2012 Planning Board was involved in an amendment that added language regarding the types of easements that may be retained during a street vacation. Ordinance 3910 clearly states that easements or rights may be reserved for the City. It doesn't say for third parties. The City Attorney is required to approval all ordinances as to form, and Mr. Taraday signed Ordinance 3910. The 2012 Planning Board was also involved in another amendment to the street vacation code. Ordinance 3901 required a description of any easement under consideration to be retained by the City. This ordinance uses the same word (retain) that the State Law uses. He summarized that Ordinance 3901 does not require a description of any easement that the City wants to grant to a third party. If such was legal and if the City Council wanted to do so, Ordinance 3901 would have required a description of those easement, as well. This was not an oversight by either the 2012 Planning Board or the 2012 City Council, and Mr. Taraday also signed Ordinance 3910. Both of the ordinances show that the Edmonds City Council has adopted City laws that do not involve property owners granting easements to third parties. He questioned why the City's laws would allow such. Wouldn't requiring rights to be granted to a third party be a gift to that third party? Do third parties and/or the general public even have legal standing to contest a street vacation? He said he has never seen dedication language that says if the City doesn't use the easement for a public use, it can convey rights to a third party instead.

Mr. Reidy commented that both the City Attorney and City staff are able to point to something that is expressly stated in the City's own code to see what actions are authorized. It's simple, the City can retain rights for the City. Previously-elected City Council Members decided that when the City retains an easement, it will not require compensation. It is either/or. He expressed his belief that the either/or law improves citizen confidence in City government and stating that the City can never be compelled to approve a street vacation does the opposite. Title 21 of the City's code defines a dedication as a gift, and charging compensation to vacate an easement that was gifted doesn't make sense to him and such conduct is arbitrary.

Regarding rights to be granted to third-party utilities, Mr. Reid said it is best to do what the code allows, reserve for the City any easements or rights needed. The City used to do it this way, as evidenced by Ordinances 3188 and 3202. He expressed his belief that an easement is superior to rights that utility companies have under a franchise contract. For example, franchise contracts often require a franchise fee, have terms and can expire. Requiring easements to be granted to utilities may be another gift. Mr. Reidy concluded his comments by asking the Board to remind City staff to bring the aerial photo the Board requested during its July 24th meeting to the September 25th.

DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD

Chair Cheung referred the Board to the Development Services Director's Report that was provided in the packet. There were no comments or questions from the Board.

CONTINUED DISCUSSION OF ARCHITECTURAL DESIGN BOARD (ADB) ROLES AND SCOPE

Mr. Chave reported that the ADB had a lengthy review of a project at their last meeting, and they didn't have time to discuss their role in design review and finalize their recommendation to the Planning Board. Hopefully, they will be able to do so at their October 2nd meeting. He suggested that, when the Board meets jointly with the City Council, it would be appropriate to mention that they are working with the ADB on this item.

DISCUSSION ON JOINT CITY COUNCIL AND PLANNING BOARD MEETING

Chair Cheung advised that the Planning Board will meet jointly with the City Council on September 24th, at which time the Board will advise the City Council of their work with the ADB regarding their role in design review and potential changes.

In addition, the Board wants to have discussions about housing and improving communications. Mr. Chave said they could also report on what the Board has been working on recently. Mr. Chave advised that the joint meeting is scheduled to last about 45 minutes.

Chair Cheung recalled that the Board was interested in feedback from the City Council regarding certain housing types, such as accessory dwelling units (ADUs). Vice Chair Robles commented that in addition to feedback relative to attached and detached ADUs, he would like to discuss potential regulations for short-term rentals to address security, parking, etc. The current code does not adequately address this use, and there needs to be rules in place before problems arise and blanket legislation ends up throwing the whole concept out the window. Board Member Rosen responded that, given the amount of change that will happen on the City Council and the Board's strong opinions, it might be better to wait until those who are in a position to take action are seated.

Board Member Rosen recalled that the Board was interested in hearing from the City Council about the newly-formed Housing Commission's charge. Mr. Chave suggested that the Board could ask the Council if there are specific concepts, such as ADU's, that they would like the Board to work on while the Housing Commission proceeds with its work. Vice Chair Robles recalled that, at their joint meeting with the ADB, the ADB expressed interest in providing input regarding the design-related elements of the ADU code. He suggested the Board could advise the City Council of its desire to continue collaborations with the ADB and the Housing Commission regarding ADUs. Board Member Rosen suggested that the Economic Development Commission should also be involved in discussions related to housing, since there are economic development impacts associated with ADUs, short-term rentals, etc.

Chair Cheung asked when the Housing Commission would commence its work. Mr. Chave answered that the City is currently working to get consultants on board to assist the Commission, and the goal is for them to start meeting in October. No meeting date has been confirmed yet.

Board Member Pence observed that the Housing Commission and Planning Board interests overlap substantially, and he would like to have a discussion with the City Council about the role liaisons could plan in relaying information amongst the two groups. Mr. Chave advised that the Housing Commission meetings will be open to the public, and a Planning Board representative could certainly attend. However, the City Council would have to approve a Planning Board Member's formal participation on the Commission. Otherwise, a Board Member could be assigned to attend their meetings and report back. Mr. Chave explained that the Housing Commission will report directly to the City Council, and any code amendment referrals would come to the Board via the City Council. Board Member Pence said he was simply interested in the Board being kept in the loop regarding the Commission's activities.

Based on his experience watching the Economic Development Commission and other commissions and boards, Board Member Cloutier cautioned against the Board being directly involved with the Housing Commission's process. He suggested it would be best for the Board to wait until the Housing Commission has come to some conclusions and forwarded a recommendation to the City Council. The City Council can then assign the Board specific tasks.

Board Member Monroe summarized that the joint meeting will include a brief report on Planning Board activities, followed by a discussion on housing and the Board's interest in continuing the ADU discussion with ADB collaboration. The Board would like to talk about possible collaboration with the Housing Commission, and a potential liaison assignment, as well. Lastly, the Board would like discuss the most appropriate and effective way for the various Boards, Commissions and the City Council to communicate with each other.

In addition to the Planning Board report and the discussion about housing, Chair Cheung recalled the Board's desire to discuss ideas for how they can better communicate their recommendations to the City Council. Specifically, are the Planning Board's minutes effective, or would it be helpful for the Board to submit a more formal recommendation to them in writing. Board Member Rosen commented that the Board serves the City Council, and it would be helpful to know how they can best give the City Council the benefit of their work. Board Member Monroe suggested the Board could describe their current process for making recommendations to the City Council. He pointed out that staff does a good job of conveying the Planning Board's discussions and recommendations to the City Council.

Chair Cheung and Vice Chair Robles agreed to prepare a summary report of the Board's recent activities, as well as an agenda and opening statements regarding each topic of discussion.

INDIGENOUS PEOPLES LAND ACKNOWLEDGEMENT FOR PUBLIC MEETINGS

Mr. Chave reported that, on August 27th, the City Council chose to use a statement recommended by the Tulalip Tribe to acknowledge that the land that is now part of the City of Edmonds is also the land of the Salish people, who have inhabited it since long before the 19th-century settlers arrived. The statement will be read early in their meetings and printed on their written agendas. The Council agreed that it would be up to each board and commission to decide whether they wanted to use the statement, and if so, whether to simply have it printed on agendas or read out loud at their meetings. However, they must use the statement that was provided by the Tulalip Tribe and adopted by the City Council.

As adopted by the City Council, the statement reads:

"We acknowledge the original inhabitants of his place, the Sdohobsh (Snohomish) people and their successors the Tulalip Tribes, who since time immemorial have hunted, fished, gathered and taken care of these lands. We respect their sovereignty, their right to self-determination, and we honor their sacred spiritual connection with the land and water."

BOARD MEMBER MONROE MOVED THAT THE STATEMENT BE READ OUT LOUD AT THE BEGINNING OF EACH PLANNING BOARD MEETING.

Board Member Cloutier reviewed that the options include: do nothing, add the statement to the Board's written agenda, make an oral statement at the beginning of each meeting, or do both a written and oral statement at each meeting. He said he would prefer to include the statement in writing on each agenda, but he felt that reading the statement orally at each meeting would actually diminish its value by making it a recitation.

Board Member Rosen observed that the Edmonds Center for the Arts reads the statement before each performance, and it is always very well received. He commented that the City Council would not have made this decision if there wasn't sufficient community support.

Board Member Cloutier said it is important to remember who occupied the land before them and what they have done, particularly since the Board's job is land related. However, he is concerned that if the statement is read over and over again, people will start to tune it out and it will lose its value. Including the statement on the agenda will be a constant reminder, but won't be seen as something that "holds up the clock."

Board Member Rosen suggested that perhaps they could read the statement periodically, such as once each month or once each quarter. Mr. Chave suggested the statement could be added at the bottom of each Planning Board agenda, and then the Board could choose to read it periodically.

BOARD MEMBER MONROE WITHDREW HIS MOTION.

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD ADD THE STATEMENT, AS WRITTEN AND ADOPTED BY THE CITY COUNCIL, TO EACH OF THEIR AGENDAS. THE STATEMENT MAY ALSO BE READ OUT LOUD PERIODICALLY. BOARD MEMBER MONROE SECONDED THE MOTION.

Chair Cheung said he wouldn't be opposed to reading the statement at every meeting.

CHAIR CHEUNG MOVED TO AMEND THE MOTION SO THAT THE STATEMENT IS READ OUT LOUD AT MEETINGS AT THE DISCRETION OF THE CHAIR. BOARD MEMBER ROSEN SECONDED THE MOTION TO AMEND.

Student Representative Bryan commented that it is good to be educated about the City's history, but he agreed with Board Member Cloutier that reading the statement at every meeting might diminish its value because it is not pertinent to anything the Board actually discusses at its meetings.

Board Member Cloutier summarized Student Representative Bryan's point that the Board does not deal with land and water issues in a manner that is affecting a local native population. He noted that the statement does not capture the concept that the City should deal with land and water with the respect it is due in connection with its past. Vice Chair Robles agreed that respect for the land and water and those who came before is something the City should definitely aspire to. Board Member Cloutier observed that most of the concepts captured in the approved statement are Federal Law issues and have nothing to do with the City.

THE MOTION, AS AMENDED, WAS UNANIMOUSLY APPROVED.

REVIEW OF EXTENDED AGENDA

Chair Cheung once again reminded the Board of the joint meeting with the City Council on September 24th. The Board's September 25th meeting will be continued deliberation on the proposed street vacation code update. The October 9th meeting will be a joint meeting with the ADB and a presentation on the 2050 Multicounty Planning Policies Update. Mr. Chave advised that the planning policy update may be postponed to the October 23rd meeting. Chair Cheung advised that the Board will receive an update on the Housing Commission on October 23rd.

Board Member Cloutier asked when the Board would start working on neighborhood center plans and implementation, which is identified on the extended agenda as a current priority. Mr. Chave advised that neighborhood center plans are not a City Council priority for 2019.

Chair Cheung asked if the Board will be having any discussion about parking in the near future. Mr. Chave said it will depend on the recommendations that come out of the parking study, if the City Council decides to proceed. Currently, the study is on hold.

Board Member Cloutier recalled that, at the their retreat, the Board requested some charts to show the City's progress on code review and other major topics. Mr. Chave advised that the Board would have to talk to the Development Services Director about whether or not staff could prepare this information.

Chair Cheung asked when the next Parks, Recreation and Cultural Services update would be presented to the Board. Mr. Chave responded that the City just hired a new director. He agreed to contact her to find out when the next update might be scheduled.

Vice Chair Robles asked if the City has a Social Media or Communications Policy that could provide guidance to the Board. Mr. Chave said he would look into the matter and report back.

PLANNING BOARD CHAIR COMMENTS

Chair Cheung did not provide any additional comments.

PLANNING BOARD MEMBER COMMENTS

Board Member Rosen recognized the September 11th date and reminded his fellow Board Members that freedom is not free. As much as he believes the country can do better, he is incredibly grateful for the opportunities it provides and that everyone can participate in the public process. He remembered and honored those who have sacrificed so that community discussions can occur.

Board Member Monroe asked staff to provide the aerial photograph that the Board requested at their July 24th meeting and referenced earlier in the meeting by Mr. Reidy. Mr. Chave agreed to remind Ms. McConnell of the request.

Vice Chair Robles read the City Council-approved statement acknowledging indigenous peoples into the record.

“We acknowledge the original inhabitants of his place, the Sdohobsh (Snohomish) people and their successors the Tulalip Tribes, who since time immemorial have hunted, fished, gathered and taken care of these lands. We respect their sovereignty, their right to self-determination, and we honor their sacred spiritual connection with the land and water.”

ADJOURNMENT

The Board meeting was adjourned at 7:44 p.m.

DRAFT

Planning Board Agenda Item

Meeting Date: 09/25/2019

Development Services Director Report

Staff Lead: Shane Hope, Director

Department: Planning Division

Prepared By: Diane Cunningham

Background/History

N/A

Staff Recommendation

N/A

Narrative

The Development Services Director will give an update on the Housing Commission.

Attachments:

Director.Report.09.20.19



MEMORANDUM

Date: September 20, 2019

To: Planning Board

From: Shane Hope, Development Services Director

Subject: Director Report

**“I alone cannot change the world,
but I can cast a stone across the water to create many ripples.”
-Mother Teresa**

Next Planning Board Meeting

The Planning Board is scheduled to meet jointly with the City Council on September 24. Hope you can be there!

After that, the next regular Planning Board meeting follows quickly—on September 25. This meeting will feature further discussion of proposed amendments to the Street Vacation Code.

STATE & REGIONAL NEWS

Puget Sound Regional Council (PSRC)

- PSRC’s Transportation Board met September 12 with an agenda that included:
 - Selection Process for Rural Town Centers and Corridors Program
 - Regional Intelligent Transportation System Inventory
- PSRC’s Regional Staff Committee met September 19 regarding:
 - Puget Sound Partnership activities for ecosystem recovery
 - Comments to date for VISION 2050 Plan
 - Draft Regional Growth Strategy—Targets and Consistency

Snohomish County Tomorrow (SCT)

- Various SCT committees have been meeting with a focus on the Draft VISION 2050 Plan.
- SCT will hold its general assembly, an annual event, on September 25.

Snohomish County HART Project

- The Snohomish County Housing Affordability Regional Task Force (HART) was organized by The Snohomish County Executive to bring local government representatives together to develop a five-year action plan to improve the region's ability to meet affordable housing needs. Over the summer, HART has been exploring resources, challenges, and opportunities.
- HART's last meeting, on September 12, included discussion of several draft regional goals. Further discussion will continue at follow-up meetings this fall.

LOCAL PROJECTS

Housing Commission

The Housing Commission's first meeting will be on September 26 at the Council Chambers, 250 5th Ave. N. The meeting, which is open to the public, will be introductory in nature and include discussion of a schedule for future meetings. Besides monthly Commission meetings, other events and public engagement opportunities will be held to provide information and get community input on housing.

The Commission is charged with recommending policy options, by the end of 2020, to expand the range of housing in Edmonds. For general information about the project, see:

<https://www.citizenshousingcommission.org/>.

OTHER LOCAL NEWS

Architectural Design Board (ADB)

The ADB meets next on Oct. 2. Items of discussion include:

- Continuation of the September 4 public hearing regarding the Main Street Commons project. The continuation provides the applicant additional time to prepare materials for resubmittal.

Cemetery Board

The Cemetery Board met on Sept. 19. Items of discussed included:

- Letter of Resignation from Betty Gaeng
- Sales, burials and financial report
- Adverting budget
- Themes for Memorial Day and Walk Back in Time 2020

Citizens Housing Commission

The Citizens' Housing Commission will meet for the first time on Sept. 26. An agenda will be posted online when available.

Diversity Commission

The Diversity Commission will meet next on Oct. 2. An agenda will be posted online when available.

Economic Development Commission (EDC)

The EDC met on September 18. Items discussed included:

- SAP memo update
- Work group updates
- Business Attraction

Economic Downtown Alliance (ED)

The ED will meeting on October 10. An agenda will be posted online when available.

Hearing Examiner

The Hearing Examiner meets next on Oct. 10. An agenda will be posted online when available.

Historic Preservation Commission (HPC)

The HPC meets next on Oct. 10. An agenda will be available online when available.

Lodging Tax Advisory Committee

The Lodging Tax Advisory Committee held a Special Meeting on September 5. Topics of discussion included:

- Funding requests for 2020

Mayors Climate Protection Committee

The Climate Protection Committee meets next on Oct. 3. An agenda will be available online.

Tree Board

The Tree Board meets next on Oct. 3. An agenda will be available online.

Youth Commission

The Youth Commission met on September 18. Items of discussion included:

- Council meetings
- What's happening in Edmonds
- Quarterly Youth Forum

City Council

The September 17 City Council meeting included:

- Award to City for Outstanding Wastewater Treatment Plant
- Salary Commission Letter on Elected Officials' Compensation
- Authorization for Supplemental Agreement regarding the Fishing Pier Rehabilitation Project
- Authorization for Supplemental Agreement regarding the 84th Avenue Overlay Project
- Award of Contract for Modernizing City Hall Elevators
- City Website Update
- Introduction to the Comparative Study on City Attorney Services

COMMUNITY CALENDAR

- September 21: Paws in the Pool, Yost pool, dogs 50 lbs & under 10 am – noon; dogs 51lbs & over 1 – 3pm
- September 30: Marsh Study Open House, 6 - 8 pm, Brackett Room
- October 1 – 15: Registration for 7th Annual Scarecrow Festival (Edmonds Historical Museum)
- October 5: Summer Market (last day for 2019)
- October 7: Candidates Forum, City Council Chambers, begins at 7 pm
- October 16 – November 1: Voting on 7th Annual Scarecrows

What happened on this day in History (September 25)?

1957 - 300 **U.S.** Army troops stood guard as nine black students were escorted to class at Central High School in Little Rock, **AR**. The children had been forced to withdraw 2 days earlier because of unruly white mobs.

1965 - Willie Mays, at the age of 34, became the oldest man to hit 50 home runs in a single season. He had also set the record for the youngest to hit 50 ten years earlier.

Planning Board Agenda Item

Meeting Date: 09/25/2019

Amendments to Chapter 20.70 (NEW 18.55) ECDC Street Vacations

Staff Lead: Jeanie McConnell

Department: Planning Division

Prepared By: Kernen Lien

Background/History

The proposed amendments were introduced to the City Council through the Planning, Public Safety and Personnel committee on July 9, 2019. The proposed code amendments were introduced to the Planning Board on July 10, 2019 and a public hearing was held on August 14, 2019

Staff Recommendation

Forward a recommendation to the City Council regarding the proposed amendments to the street vacation code.

Narrative

Chapter 20.70 Edmonds Community Development Code (ECDC) Street Vacations establishes procedures and criteria that the city uses to make decisions regarding vacations of streets, alleys, and public easements. Amendments to the street vacation code are proposed to address the following:

- Move street vacation code into new Chapter 18.55 ECDC under Title 18 - Public Works Requirements
- Reorganization and clarification of various code sections to make the process and requirements more clear
- Clarification that this code section applies to the vacation of streets, alleys, and public easements relating to street, pedestrian or travel purposes
- Requirement for an appraisal to be completed by a city selected appraiser, at the expense of the applicant and only after a resolution of intent has been approved by the council.
- Allowance for the conditions placed on the street vacation to be met within a timeframe set by resolution *or* within 90-days as stated in the code.

Much of the code update is primarily related to reorganization and adding clarification to the process. The Planning Board's discussion has focused on monetary compensation for the vacations, the appraisal process, and the ability of applicants to challenge conditions related to the vacation. In these discussions the board questioned whether the City could accept monetary compensation with the vacation of a street. Attachment 4 is a memorandum that was prepared by the City Attorney, Jeff Taraday, to address these concerns. Following the public hearing on August 14th, staff indicated options for some of the specific code sections would be brought back for the Planning Board's consideration. Attachment 1 contains a redline/strikeout version of the code amendments that represents staff's recommendation. A clean version of the staff's recommended amendments is also provided in

Attachment 2. Options to the code amendments for the Planning Board's consideration are provided in Attachment 3. Attachment 3 contains a table with the existing code, a summary of the issue around the specific code section, staff's recommended language, and optional code language for Planning Board's consideration. Within the code provided in Attachments 1 and 2, there are references to the options table identifying where the alternative code language would be inserted into the code.

For background information, staff reviewed street vacations approved by the City Council since 1998. A summary of these vacations is provided in Attachment 5.

Attachments:

Attachment 1: Draft Chapter 20.70 (NEW 18.55) ECDC - Track Changes

Attachment 2: Draft Chapter 20.70 (NEW 18.55) ECDC - Clean

Attachment 3: Planning Board Options Table

Attachment 4: City Attorney memorandum regarding street vacation payments

Attachment 5: Past Street Vacations Summary

Attachment 6: July 10, 2019 Planning Board Minutes Excerpt (PB Intro)

Attachment 7: July 24, 2019 Planning Board Minutes Excerpt (Public Comment)

Attachment 8: August 14, 2019 Planning Board Minutes Excerpt (Public Hearing)

Attachment 9: September 11, 2019 Planning Board Minutes Excerpt (Public Comment)

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Chapter ~~20.7018.5518.55~~ STREET VACATIONS OF
STREETS AND PUBLIC ACCESS EASEMENTS

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Chapter ~~20.7018.5518~~ XX55

STREET VACATIONS OF STREETS AND PUBLIC ACCESS EASEMENTS

Sections:

~~20.7018.55.000~~ - ~~_____~~ Purpose.

~~18.55.005~~ Definitions.

~~20.7018.55.010~~ A-Applicability and effect.

~~20.7018.55.05015~~ Initiation of proceedings and application.

~~20.7018.55.020~~ Criteria for vacation.

~~20.70.030~~ City easement rights for public utilities and services.

~~20.7018.55.040~~ Limitations on vacations.

~~20.70.XXX~~ Appraisals and appraisal fee.

~~20.7018.55.050~~ Initiation of proceedings.

~~20.7018.55.060~~ Application requirements.

~~20.7018.55.070~~ Date of Public hearing—Date fixing.

~~20.7018.55.080~~ Staff report preparation

~~20.7018.55.090~~ Public notification – Contents and distribution.

~~20.7018.55.100~~ Vacation file content and availability.

~~20.7018.55.110~~ Public hearing procedures—Required.

~~20.7018.55.120~~ Public hearing—Continuation.

~~20.7018.55.130~~ Public hearing—Presentation by planning manager.

~~18.55.030~~ City easement rights for public utilities and services.

~~18.55.XXX~~ Appraisals and appraisal fee.

~~20.7018.55.140~~ Resolution of intent and Ffinal decision.

~~20.7018.55.000~~ Purpose.

This chapter establishes the procedures and criteria that the city will use to decide upon vacations of streets, alleys, and other types of public easements, or portions thereof relating to street, pedestrian or travel purposes. [Ord. 2933 § 1, 1993].

~~18.55.005~~ Definitions.

For the purposes of this chapter, the following terms shall be understood in accord with the definitions, below:

A. "applicant" shall refer to the petitioning owner(s) of property abutting upon the subject property.

B. "subject property" means the street, alley, easement, or portion thereof sought to be vacated.

C. "abutting" means having a lineal boundary in common with a portion of the boundary of the subject property. A property that touches the subject property at a single point is not "abutting" under this definition.

D. "easement" means an easement for public right-of-way or similar easement for pedestrian and/or vehicular travel. Publicly owned easements that serve underground or overhead utilities but serve no travel function do not fall within the definition of "easement" for the purposes of this chapter.

E. "portion thereof" means a portion of any street, alley, or easement sought to be vacated.

F. "director" means the Public Works Director or their designee.

G. "necessary" or "necessity" means reasonable necessity in the foreseeable future. It does not mean absolute, or indispensable/indispensable, or immediate need.

H. "travel" means vehicular or pedestrian travel by the public.

~~20.7018.55.010~~ Applicability and effect.

A. General. This chapter applies to each request for vacation of streets, alleys, and public easements, or portions thereof relating to street, pedestrian or travel purposes. This chapter shall not apply to vacation/the release or termination of other types of public easements like utility easements. As used in this chapter, the term "subject property" means the street, alley or public easement, or portions thereof sought to be vacated. Where the term "applicant" is used, if the city did not initiate the vacation, "applicant" shall refer to the petitioning owner(s) of

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Chapter ~~20.70~~18.55~~18.55~~ STREET VACATIONS OF
STREETS AND PUBLIC ACCESS EASEMENTS

~~property abutting upon the street or alley, or part thereof, subject to the vacation request. [Ord. 3910 § 2, 2013; Ord. 2933 § 1, 1993].~~ by city council or by petition. Note: if the street to be vacated subject property is shown on the City's official street map (Chapter 19.80~~18.50~~ ECDC), ~~the an ordinance approved street vacation vacating the subject property also changes shall be deemed to have amended the official street map to remove the vacated streets subject property (See Chapter 20.65 ECDC). The director shall be authorized to update the official street map in accord with each approved street vacation. [Ord. 2933 § 1, 1993].~~

20.70~~18.55~~05015 Initiation of proceedings and application.

A. A vacation may be initiated by:

1. A. City council; or
2. B. Petition of the owners of more than two-thirds of property abutting the portion of the street or alley to be vacated or, in the case of an easement, owners of two-thirds of property underlying the portion of the easement to be vacated subject property.

C. Hereafter within this chapter, where the term "applicant" is used, if the city did not initiate the vacation, "applicant" shall refer to the petitioning owner(s) of property abutting upon the street or alley, or part thereof, subject to the vacation request. [Ord. 3910 § 2, 2013; Ord. 2933 § 1, 1993].

B. Council resolution for vacation. The City Council may initiate, by resolution, vacation procedures. The resolution shall contain a legal description of the subject property. When a vacation is initiated by resolution, staff shall prepare an application that conforms to D, below, except that applications for such vacations shall be exempt from D.1, D.3, and D.4.

C. Petition for vacation brought by abutting property owners. The owners of an interest in any real estate abutting upon any street or alley, or underlying any public easement governed by this chapter subject property, may petition the city council for vacation of the subject property. The petition shall must be signed by signed by the owners of more than two-thirds of the property abutting on the street or alleys subject property. The two-thirds ownership shall be calculated (based on front footagelinear frontage abutting the subject property); or underlying the public easement (based on square footage).

D. An applicant may apply for a vacation by submitting the following application for a street vacation initiated by Petition shall contain the following items:

1. A. A valid vacation petition with supporting affidavits on forms provided by the planning engineering division;
2. B. A legal description of the subject property street, alley, easement, or part thereof to be vacated. This legal description shall be prepared by a surveyor registered in the state of Washington;
3. A completed application and fee as established by ordinance resolution of the city council;
4. A signed agreement to pay the cost of an appraisal as provided for in Section 18.XX55.XXX;
5. C. Fifteen paper copies of a A site survey map showing the street, alley, easement or part thereof to be vacated subject property and showing all properties with subdivision, block, lots, and specifying open and unopened rights-of-way for a radius of 400 feet from any boundary of the street, alley, easement, or part thereof, to be vacated subject property. The site survey se site maps must be e at a scale of 1" = 50';

D. An 8-1/2 by 11 inch clear plastic transparency of the site map;

6. E. Address labels obtained from the Snohomish County comptroller's office containing the names and addresses of the owners of all property within 300 feet of any boundary of the street, alley, easement, or part thereof, to be vacated. Adjacent Property Owners List following guidelines established by the Planning Division; Address labels for the owners of real property within 300 feet of the boundaries of the subject property. Addresses shall be obtained from the Snohomish County's real property tax records. The adjacent property owners list must be current to within six months of the date of initial application;
7. F. A copy of the Snohomish County assessor's map identifying the properties specified in subsection 6E of this section;
8. Identification of which of the abutting property owners (or predecessors-in-interest) originally dedicated the subject property; and

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~~9. Any additional information or material that the Public Works Director or his/her/their appointee/designee determines is reasonably necessary for the city council to consider the requested vacation. [Ord. 2933 § 1, 1993].~~

~~G. Two copies of an appraisal prepared by a qualified land appraiser with an M.A.I. designation, establishing the fair market value of the street, alley, or part thereof to be vacated. An appraisal is not required if a utility easement only is proposed to be vacated;~~

~~H. A completed application and fee as established by ordinance;~~

~~I. If the property was originally dedicated by one and only one of the abutting properties, the designation of the property from which the right of way was dedicated; and~~

~~J. Any additional information or material that the manager of the planning division or his/her appointee determines is reasonably necessary for the city council to consider the requested vacation. [Ord. 2933 § 1, 1993].~~

20.7018.55.020 Criteria for vacation.

The city council may vacate ~~the public's real property rights in a street, alley, or public easement relating to street, pedestrian or travel purposes~~subject property easement only if it finds that :

~~A. The vacation and the conditions imposed pursuant to a resolution of intent to vacate collectively is-are in the public interest. This decision is left to the legislative discretion of the city council.; and~~

~~B. The street, alley, or public easement is not currently necessary for travel or other street purposes, nor likely to be in the future and that if the public easement is primarily for pedestrian access, it is not likely to be useful for pedestrian access now or in the future; and;~~

No property will be denied direct access as a result of the vacation. [Ord. 2933 § 1, 1993].

20.70.030 — Right to reserve easements City easement rights for public utilities and services.

In vacating a street, alley, or public easement governed by this chapter, the city council may reserve for the city any easements or the right to exercise and grant any easements for the following purposes:

- ~~— Construction, repair and maintenance of public utilities and services. [Ord. 3910 § 1, 2013; Ord. 2933 § 1, 1993].~~
- ~~— Pedestrian walkway or trail purposes;~~
- ~~— Construction, repair and maintenance of a third party utility company or municipal corporation or special purpose district who that has a vested interest in the subject property; and~~
- ~~— Any other type of easement relating to the city's right to control, use and manage rights of way.~~

20.7018.55.040 Limitations on vacations.

- A. Areas that May Not Be Vacated. The city may not vacate any ~~street, alley, public easement relating to street, pedestrian or travel purposes, or part thereof~~subject property that abuts any body of water unless all elements of RCW 35.79.035 are complied with, and the vacated area will thereby become available for the city or other public entity to acquire and to use for a public purposesatisfied.
- B. Objection by Property Owner. The city shall not proceed with ~~the a city council initiated~~ vacation if the owners of 50 percent or more of the ~~lineal footage~~ of property abutting the ~~street or alley or part thereof, or underlying the public easement or part thereof, to be vacated~~subject property file a written objection in the planning divisionwith the city clerk prior to the time of the hearing. [Ord. 2933 § 1, 1993].

20.70.XXX Appraisals and appraisal fee

~~The Public Works director is authorized to obtain appraisals from qualified, independent appraisers as part of preparing staff reports on vacations. Payment to the City of an appraisal fee in the amount of five thousand dollars- (\$5000), which fee shall be used to obtain an appraisal, prepared by a city selected appraiser establishing fair market~~

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~~value of the street, alley, public easement relating to street, pedestrian or travel purposes, or part thereof to be vacated, taking into account any reduction in fair market value associated with the reservation of any easements.~~

~~20.7018.55.050~~—Initiation of proceedings.

A vacation may be initiated by:

~~A. City council; or~~

~~B. Petition of the owners of more than two-thirds of property abutting the portion of the street or alley to be vacated or, in the case of an easement, two-thirds of property underlying the portion of the easement to be vacated;~~

~~C. Hereafter within this chapter, where the term “applicant” is used, if the city did not initiate the vacation, “applicant” shall refer to the petitioning owner(s) of property abutting upon the street or alley, or part thereof, subject to the vacation request. [Ord. 3910 § 2, 2013; Ord. 2933 § 1, 1993].~~

~~20.7018.55.060~~—Application requirements.

An applicant may apply for a vacation by submitting the following:

~~A. A vacation petition with supporting affidavits on forms provided by the planning division;~~

~~B. A legal description of the street, alley, easement, or part thereof to be vacated. This legal description shall be prepared by a surveyor registered in the state of Washington;~~

~~C. Fifteen paper copies of a site map showing the street, alley, easement or part thereof to be vacated and showing all properties with subdivision, block, lots, and specifying open and unopened rights-of-way for a radius of 400 feet from the street, alley, easement, or part thereof, to be vacated. These site maps must be at a scale of 1" = 50';~~

~~D. An 8-1/2 by 11-inch clear plastic transparency of the site map;~~

~~E. Address labels obtained from the Snohomish County comptroller's office containing the names and addresses of the owners of all property within 300 feet of any boundary of the street, alley, easement, or part thereof, to be vacated;~~

~~F. A copy of the Snohomish County assessor's map identifying the properties specified in subsection E of this section;~~

~~G. Two copies of an appraisal prepared by a qualified land appraiser with an M.A.I. designation, establishing the fair market value of the street, alley, or part thereof to be vacated. An appraisal is not required if a utility easement only is proposed to be vacated;~~

~~H. A completed application and fee as established by ordinance;~~

~~I. If the property was originally dedicated by one and only one of the abutting properties, the designation of the property from which the right-of-way was dedicated; and~~

~~J. Any additional information or material that the manager of the planning division or his/her appointee determines is reasonably necessary for the city council to consider the requested vacation. [Ord. 2933 § 1, 1993].~~

~~20.7018.55.070~~ Date of Public hearing—Date fixing.

~~Upon receiving a complete Subsequent to the completion of an application for vacation, or upon passage of a resolution initiation by the city council seeking vacation, the city council shall by resolution fix a time when the city council will hold a public hearing on the proposed vacation. The hearing will be not more than 60 days nor less than 20 days after the date of passage of the resolution scheduling the public hearing. [Ord. 2933 § 1, 1993].~~

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~~20.7018.55.080~~ Staff report preparation.

- A. Contents. The ~~planning manager~~Public Works Director or his/her designee shall consult with the City's planning manager on the proposal and prepare a staff report containing the following information:
1. All pertinent application materials submitted by the applicant;
 2. All comments regarding the vacation received in the ~~planning engineering~~planning engineering division prior to distribution of the staff report;
 3. An analysis of the requested vacation in relation to the provisions of this chapter and the applicable provisions of the comprehensive plan; and
 4. A recommendation on the vacation.
- B. Distribution. Prior to the hearing, the ~~planning manager~~Public Works Director shall distribute ~~this the staff~~the staff report to:
1. Each member of the city council; and
 2. Each applicant (if applicable). [Ord. 2933 § 1, 1993].

~~20.7018.55.090~~ Public notification – Contents and distribution.

- A. Content. The city clerk shall prepare a public notice containing the following information:
1. A statement that a request to vacate the ~~subject property street, alley, easement, or part thereof~~subject property will be considered by the city council;
 2. A location~~al~~ description in non-legal language along with a vicinity map that identifies the ~~street, alley, easement, or part thereof~~subject property proposed to be vacated;
 3. A statement of the time and place of the public hearing before the city council;
 4. A statement ~~that the of the availability of the~~vacation file is available for viewing at Edmonds City Hall;
 5. A statement of the right of any person to submit written comments to the city council prior to or at the public hearing and to appear before the city council at the hearing to give comments orally; and
 6. A description of any easement under consideration to be retained by the city. In the event an easement is desired, but was not included in the notice, the public hearing will be continued to allow time for notice of the easement to be provided.
- B. Distribution. At least 20 calendar days before the public hearing the ~~planning manager~~city clerk shall distribute the public notice as follows:
1. A copy will be sent to the owner of each piece of property within 300 feet of any boundary of the ~~street, alley, easement, or part thereof to be vacated~~subject property;
 2. A copy will be sent to ~~each the residents living immediately adjacent to of properties abutting the street, alley, public easement relating to street, pedestrian or travel purposes, or part thereof to be vacated~~subject property;
 3. A copy will be published in the official newspaper of the city, ~~except no vicinity map shall be required~~;
 4. At least three copies will be posted in conspicuous public places in the city; and
 5. At least ~~three one~~three copies will be posted on the ~~subject property street, alley, easement, or part thereof~~subject property to be vacated. [Ord. 3901 § 1, 2012; Ord. 2933 § 1, 1993].

~~20.7018.55.100~~ Vacation file content and availability.

- A. Content. The ~~planning manager~~Public Works Director shall compile a vacation file which contains all information pertinent to the proposed vacation.
- B. Availability. This file is a public record. It is available for inspection and copying in the ~~planning engineering~~planning engineering division during regular business hours. [Ord. 2933 § 1, 1993].

~~20.7018.55.110~~ Public hearing procedures—Required.

- A. Public Hearing. The city council shall hold a public hearing on each requested vacation. [Ord. 2933 § 1, 1993].
- B. Continuation of public hearing. The city council may continue the hearing if, for any reason, it is unable to hear all of the public comments on the proposed vacation, or if the city council determines that it needs more information on the proposed vacation. If during the hearing, the city council announces the time and place of the next to continue the hearing on the vacation, no further notice of the hearing need be given. [Ord. 2933 § 1, 1993].
- C. Presentation. At the outset of the hearing, the public works planning manager director or his/her designee shall make a brief presentation of:

- 1. An analysis of the requested vacation in relation to the provision of this chapter and the applicable provisions of the comprehensive plan; and
 - 2. A recommendation on the requested vacation. [Ord. 2933 § 1, 1993].
- D. Public Participation. Any interested person may participate in the public hearing in either or both of the following ways:
- 1. By submitting written comments to the city council either by delivering the comments to the engineering division prior to the hearing or by giving the comments directly to the city council at the hearing; and
 - 2. By appearing in person, or through a representative, at the hearing and making oral comments directly to the city council. The city council may ~~reasonable~~reasonably ~~limit the extent of these oral~~ comments to facilitate the orderly and timely conduct of the hearing.

~~20.7018.55.120~~ Public hearing—Continuation.

~~The city council may continue the hearing if, for any reason, it is unable to hear all of the public comments on the vacation, or if the city council determines that it needs more information on the vacation. If during the hearing, the city council announces the time and place of the next hearing on the vacation, no further notice of the hearing need be given. [Ord. 2933 § 1, 1993].~~

~~20.7018.55.130~~ Public hearing—Presentation by planning manager.

~~At the outset of the hearing, the planning manager or his/her designee shall make a brief presentation of:~~

- A. ~~An analysis of the requested vacation in relation to the provision of this chapter and the applicable provisions of the comprehensive plan; and~~
- B. ~~A recommendation on the requested vacation. [Ord. 2933 § 1, 1993].~~

18.55.030 Right to reserve easements.

In vacating any subject property, the city council may reserve for the city any easements or the right to exercise and grant any easements for the following purposes:

- A. Construction, repair and maintenance of public utilities and services. [Ord. 3910 § 1, 2013; Ord. 2933 § 1, 1993].
- B. Pedestrian walkway or trail purposes; and/or
- C. Construction, repair and maintenance of utilities by a third-party utility company, municipal corporation, or special purpose district that has a vested interest in the subject property.

18.55.XXX Appraisals and appraisal fee

- A. -Applicability. Where the resolution of intent to vacate includes a compensation requirement, an independent appraisal shall be required.
- B. Appraisal fee. If the City Council adopts a resolution of intent to vacate the subject property, the petitioner shall deposit sufficient funds to cover the City’s estimated cost of a full appraisal of the subject property. In the event that the City’s actual appraisal cost is less than the amount deposited, the vacation compensation paid by the petitioner to the City shall be reduced by the difference between the deposit and the actual cost, or, in the alternative, such difference shall be refunded. In the event that the City’s actual appraisal cost is more than the amount deposited, the vacation compensation payable to the City by the petitioner shall be increased by the difference between the deposit and the actual appraisal cost. For street vacations initiated by City Council, the City shall be responsible for any associated appraisal fees.
- CB. —If the City Council adopts a resolution of intent to vacate the subject property, the director shall be authorized to obtain an appraisal of the fair market value of the subject property from a qualified appraiser.

Commented [MJ1]: See PB Options Table – Item 1

Commented [MJ2]: See PB Options Table – Item 3

Commented [MJ3]: See PB Options Table – Item 4

~~taking into account any reduction in fair market value associated with the conditions imposed in the resolution of intent, including but not limited to a condition requiring the dedication of an alternative right-of-way.~~

Commented [MJ4]: See PB Options Table – Item 1

~~DC. —After the appraisal has been completed, the director shall notify the petitioner of the amount of compensation required, adjusting for any difference between estimated and actual appraisal costs. The payment shall be delivered by the property owner(s) to the City’s Finance and Administrative Services Director.~~

~~E. Waiver. The requirement for an appraisal and subsequent monetary compensation will be waived if a street vacation initiated by City Council, by resolution, includes a finding that the public benefit accruing from the vacation alone is sufficient to justify the vacation without any monetary compensation to the City.~~

20.7018.55.140 Resolution of Intent and Final decision.

~~A. Generally. Following the public hearing, the city council shall may, by motion approved by a majority of the entire membership in a roll call vote to, either:~~

~~1. Adopt an ordinance granting the vacation; or~~

~~2. Adopt a motion denying the vacation; or~~

~~3. Adopt a resolution of intent to vacate. If there are insufficient votes to adopt a resolution of intent, the street vacation will be deemed denied.~~

~~B. Resolution of intent to vacate. The city council may adopt a resolution of intent to vacate –stating that the city council will intends, by ordinance, to grant the vacation if the applicant owner(s) of property abutting upon the street or alley, or part thereof so vacated, meets specified conditions within 90 days, unless otherwise a different time period is specified within the resolution. The city may require the following as conditions of the resolution of intent to vacate:~~

~~1. Easement Conditions. The city council may condition approval of a street vacation upon satisfaction of any or all of the following easement-related conditions:~~

~~a. Either: Reservation of an easement as outlined in section ECDC 20.7018.55.030; and/or~~

~~a. Acceptance of a grant of substitute public right-of-way which has value as right-of-way at least equal to the subject property.~~

~~b. Covenants intended to protect critical areas or otherwise limit future development on the subject property.~~

~~2. Monetary compensation. The city council shall condition approval of a street vacation upon satisfaction of the following monetary conditions:~~

~~a. Payment of appraisal fees as outlined in section ECDC 18.55.XXX; and~~

~~b. Payment to be paid to the city, prior to the final decision effective date of the ordinance, in in the amount of up to one-half the fair market value for the subject property street, alley, or part thereof to be vacated unless the subject property was acquired at “public expense;” or has been part of a dedicated public right-of-way for 25 years or more, in which case then full appraised fair market value shall be paid, or~~

Commented [MJ5]: See PB Options Table – Item 1

Commented [MJ6]: See PB Options Table – Item 2

~~ii. The grant of a substitute public right-of-way which has value as an access way at least equal to the vacated street, alley, or part thereof; or~~

~~iii. Any combination of subsections (A)(3)(a)(i) and (A)(3)(a)(ii) of this section totaling but not more than one-half the fair market value of the street, alley, or part thereof to be vacated.~~

~~OR~~

~~b. A grant of an easement to the city in exchange for the easement vacated.~~

~~3. Any challenge to one or more conditions imposed pursuant to a resolution of intent to vacate must be brought in Snohomish County Superior Court no later than 30 days following the adoption of the resolution of intent. If such a challenge is successful, the city council shall determine whether to amend~~

Commented [MJ7]: See PB Options Table – Item 5

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the resolution of intent by adopting a different set of conditions or to deny the street vacation in its entirety.

- ~~C. Final decision.~~ If the abutting property owner(s) complies with conditions imposed in the resolution of intent to vacate within the timeframe specified within the resolution90 days, the city council shall adopt an ordinance granting the vacation, provided that the city council shall not be required to adopt the vacation ordinance if it finds, after reviewing the appraisal, that the monetary compensation to be paid to the city is not sufficient to compensate for the public's loss of the street, alley, public easement relating to street, pedestrian or travel purposes or part thereof that would be vacatedsubject property. The effective date clause of the ordinance shall be drafted to make the ordinance effective upon recording, and only if the ordinance contains proof of payment received, with the City receipt number indicated on the ordinance. If the city council ultimately determines that the amount of compensation is not adequate to complete the vacation, the City shall reimburse the applicants for the appraisal costs.
- ~~B. Findings Required.~~ As part of each ordinance granting a vacation, motion denying a vacation, or resolution of intent to vacate, the city council shall adopt findings and conclusions to support its decision.
- ~~D. C.~~-Distribution. Within five working days of the city council decision, the public works planning director manager shall mail a copy of the notice of decision to the applicant and all persons who submit a written or oral testimony at the city council's hearing. [Ord. 3910 § 3, 2013; Ord. 2933 § 1, 1993; Ord. 2493, 1985].

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Chapter 18.55

VACATIONS OF STREETS AND PUBLIC ACCESS EASEMENTS

Sections:

- 18.55.000 Purpose.
- 18.55.005 Definitions.
- 18.55.010 Applicability and effect.
- 18.55.015 Initiation of proceedings and application.
- 18.55.020 Criteria for vacation.
- 18.55.040 Limitations on vacations.
- 18.55.070 Date of public hearing.
- 18.55.080 Staff report preparation
- 18.55.090 Public notification – Contents and distribution.
- 18.55.100 Vacation file content and availability.
- 18.55.110 Public hearing procedures
- 18.55.030 City easement rights for public utilities and services.
- 18.55.XXX Appraisals and appraisal fee.
- 18.55.140 Resolution of intent and final decision.

18.55.000 Purpose.

This chapter establishes the procedures and criteria that the city will use to decide upon vacations of streets, alleys, easements, or portions thereof. [Ord. 2933 § 1, 1993].

18.55.005 Definitions.

For the purposes of this chapter, the following terms shall be understood in accord with the definitions, below:

- A. “applicant” shall refer to the petitioning owner(s) of property abutting upon the subject property.
- B. “subject property” means the street, alley, easement, or portion thereof sought to be vacated.
- C. “abutting” means having a lineal boundary in common with a portion of the boundary of the subject property. A property that touches the subject property at a single point is not “abutting” under this definition.
- D. “easement” means an easement for public right-of-way or similar easement for pedestrian and/or vehicular travel. Publicly owned easements that serve underground or overhead utilities but serve no travel function do not fall within the definition of “easement” for the purposes of this chapter.
- E. “portion thereof” means a portion of any street, alley, or easement sought to be vacated.
- F. “director” means the Public Works Director or their designee.
- G. “necessary” or “necessity” means reasonable necessity in the foreseeable future. It does not mean absolute, or indispensable, or immediate need.
- H. “travel” means vehicular or pedestrian travel by the public.

18.55.010 Applicability and effect.

A. General. This chapter applies to each request for vacation of streets, alleys, easements, or portions thereof. This chapter shall not apply to the release or termination of other types of public easements like utility easements. [Ord. 3910 § 2, 2013; Ord. 2933 § 1, 1993]. Note: if the subject property is shown on the City’s official street map (Chapter 18.50 ECDC), an ordinance vacating the subject property shall be deemed to have amended the official street map to remove the subject property (See Chapter 20.65 ECDC). The director shall be authorized to update the official street map in accord with each approved street vacation. [Ord. 2933 § 1, 1993].

18.55.015 Initiation of proceedings and application

- A. A vacation may be initiated by:
 1. City council; or
 2. Petition of the owners of two-thirds of property abutting the subject property.

- B. Council resolution for vacation. The City Council may initiate, by resolution, vacation procedures. When a vacation is initiated by resolution, staff shall prepare an application that conforms to D, below, except that applications for such vacations shall be exempt from D.1, D.3, and D.4.
- C. Petition for vacation brought by abutting property owners. The owners of an interest in any real estate abutting upon any subject property, may petition the city council for vacation of the subject property. The petition must be signed by the owners of two-thirds of the property abutting on the subject property. The two-thirds ownership shall be calculated based on linear frontage abutting the subject property.
- D. An application for a street vacation initiated by Petition shall contain the following items:
1. A valid vacation petition on forms provided by the engineering division;
 2. A legal description of the subject property. This legal description shall be prepared by a surveyor registered in the state of Washington;
 3. A completed application and fee as established by resolution of the city council;
 4. A signed agreement to pay the cost of an appraisal as provided for in Section 18.55.XXX;
 5. A site survey showing the subject property and all properties with subdivision, block, lots, and specifying open and unopened rights-of-way for a radius of 400 feet from any boundary of the subject property. The site survey must be to scale;
 6. Address labels for the owners of real property within 300 feet of the boundaries of the subject property. Addresses shall be obtained from the Snohomish County's real property tax records. The adjacent property owners list must be current to within six months of the date of initial application;
 7. A copy of the Snohomish County assessor's map identifying the properties specified in subsection 6 of this section;
 8. Identification of which of the abutting property owners (or predecessors-in-interest) originally dedicated the subject property; and
 9. Any additional information or material that the Public Works Director or their designee determines is reasonably necessary for the city council to consider the requested vacation. [Ord. 2933 § 1, 1993].

18.55.020 Criteria for vacation.

The city council may vacate the public's real property rights in a subject property only if it finds that the vacation and the conditions imposed pursuant to a resolution of intent to vacate collectively are in the public interest. This decision is left to the legislative discretion of the city council. [Ord. 2933 § 1, 1993].

18.55.040 Limitations on vacations.

- A. Areas that May Not Be Vacated. The city may not vacate any subject property that abuts any body of water unless all elements of RCW 35.79.035 are satisfied.
- B. Objection by Property Owner. The city shall not proceed with a city council initiated vacation if the owners of 50 percent or more of the lineal footage of property abutting the subject property file a written objection with the city clerk prior to the time of the hearing. [Ord. 2933 § 1, 1993].

18.55.070 Date of public hearing.

Upon receiving a complete application for vacation, or upon passage of a resolution by the city council seeking vacation, the city council shall by resolution fix a time when the city council will hold a public hearing on the proposed vacation. The hearing will be not more than 60 days nor less than 20 days after the date of passage of the resolution scheduling the public hearing. [Ord. 2933 § 1, 1993].

18.55.080 Staff report.

- A. Contents. The Public Works Director or his/her designee shall consult with the City's planning manager on the proposal and prepare a staff report containing the following information:
1. All pertinent application materials submitted by the applicant;
 2. All comments regarding the vacation received in the engineering division prior to distribution of the staff report;
 3. An analysis of the requested vacation in relation to the provisions of this chapter and the applicable provisions of the comprehensive plan; and
 4. A recommendation on the vacation.

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- B. Distribution. Prior to the hearing, the Public Works Director shall distribute the staff report to:
1. Each member of the city council; and
 2. Each applicant (if applicable). [Ord. 2933 § 1, 1993].

18.55.090 Public notification – Contents and distribution.

- A. Content. The city clerk shall prepare a public notice containing the following information:
1. A statement that a request to vacate the subject property will be considered by the city council;
 2. A location description in non-legal language along with a vicinity map that identifies the subject property;
 3. A statement of the time and place of the public hearing before the city council;
 4. A statement that the vacation file is available for viewing at Edmonds City Hall;
 5. A statement of the right of any person to submit written comments to the city council prior to or at the public hearing and to appear before the city council at the hearing to give comments orally; and
 6. A description of any easement under consideration to be retained by the city. In the event an easement is desired, but was not included in the notice, the public hearing will be continued to allow time for notice of the easement to be provided.
- B. Distribution. At least 20 calendar days before the public hearing the city clerk shall distribute the public notice as follows:
1. A copy will be sent to the owner of each piece of property within 300 feet of any boundary of the subject property;
 2. A copy will be sent to the residents of properties abutting the subject property;
 3. A copy will be published in the official newspaper of the city, except no vicinity map shall be required;
 4. At least three copies will be posted in conspicuous public places in the city; and
 5. At least one copy will be posted on the subject property to be vacated. [Ord. 3901 § 1, 2012; Ord. 2933 § 1, 1993].

18.55.100 Vacation file content and availability.

- A. Content. The public works director shall compile a vacation file which contains all information pertinent to the proposed vacation.
- B. Availability. This file is a public record. It is available for inspection and copying in the engineering division during regular business hours. [Ord. 2933 § 1, 1993].

18.55.110 Public hearing procedures.

- A. Public Hearing. The city council shall hold a public hearing on each requested vacation. [Ord. 2933 § 1, 1993].
- B. Continuation of public hearing. The city council may continue the hearing if, for any reason, it is unable to hear all of the public comments on the proposed vacation, or if the city council determines that it needs more information on the proposed vacation. If during the hearing, the city council announces the time and place to continue the hearing on the vacation, no further notice of the hearing need be given. [Ord. 2933 § 1, 1993].
- C. Presentation. At the outset of the hearing, the public works director or his/her designee shall make a brief presentation of:
1. An analysis of the requested vacation in relation to the provision of this chapter and the applicable provisions of the comprehensive plan; and
 2. A recommendation on the requested vacation. [Ord. 2933 § 1, 1993].
- D. Public Participation. Any interested person may participate in the public hearing in either or both of the following ways:
1. By submitting written comments to the city council by delivering the comments to the engineering division prior to the hearing or by giving the comments directly to the city council at the hearing; and
 2. By appearing in person, or through a representative, at the hearing and making oral comments directly to the city council. The city council may reasonably limit the extent of these oral comments to facilitate the orderly and timely conduct of the hearing.

18.55.030 Right to reserve easements.

20190925 Planning Board DRAFT

Commented [MJ1]: See PB Options Table – Item 1

In vacating any subject property, the city council may reserve for the city any easements or the right to exercise and grant any easements for the following purposes:

- A. Construction, repair and maintenance of public utilities and services. [Ord. 3910 § 1, 2013; Ord. 2933 § 1, 1993].
- B. Pedestrian walkway or trail purposes; and/or
- C. Construction, repair and maintenance of utilities by a third-party utility company, municipal corporation, or special purpose district that has a vested interest in the subject property.

18.55.XXX Appraisals and appraisal fee

- A. Applicability. Where the resolution of intent to vacate includes a compensation requirement, an independent appraisal shall be required.
- B. Appraisal fee. If the City Council adopts a resolution of intent to vacate the subject property, the petitioner shall deposit sufficient funds to cover the City’s estimated cost of a full appraisal of the subject property. In the event that the City’s actual appraisal cost is less than the amount deposited, the vacation compensation paid by the petitioner to the City shall be reduced by the difference between the deposit and the actual cost, or, in the alternative, such difference shall be refunded. In the event that the City’s actual appraisal cost is more than the amount deposited, the vacation compensation payable to the City by the petitioner shall be increased by the difference between the deposit and the actual appraisal cost. For street vacations initiated by City Council, the City shall be responsible for any associated appraisal fees.
- C. If the City Council adopts a resolution of intent to vacate the subject property, the director shall be authorized to obtain an appraisal of the fair market value of the subject property from a qualified appraiser, taking into account any reduction in fair market value associated with the conditions imposed in the resolution of intent, including but not limited to a condition requiring the dedication of an alternative right-of-way.
- D. After the appraisal has been completed, the director shall notify the petitioner of the amount of compensation required, adjusting for any difference between estimated and actual appraisal costs. The payment shall be delivered by the property owner(s) to the City’s Finance and Administrative Services Director.
- E. Waiver. The requirement for an appraisal and subsequent monetary compensation will be waived if a street vacation initiated by City Council, by resolution, includes a finding that the public benefit accruing from the vacation alone is sufficient to justify the vacation without any monetary compensation to the City.

Commented [MJ2]: See PB Options Table – Item 3

Commented [MJ3]: See PB Options Table – Item 4

Commented [MJ4]: See PB Options Table – Item 1

18.55.140 Resolution of Intent and Final decision.

- A. General. Following the public hearing, the city council may, by motion approved by a majority of the entire membership in a roll call vote to adopt a resolution of intent to vacate. If there are insufficient votes to adopt a resolution of intent, the street vacation will be deemed denied.
- B. Resolution of intent to vacate. The city council may adopt a resolution of intent to vacate stating the city council intends, by ordinance, to grant the vacation if the applicant meets specified conditions within 90 days, unless a different time period is specified within the resolution. The city may require the following as conditions of the resolution of intent to vacate:
 - 1. Conditions. The city council may condition approval of a street vacation upon satisfaction of any or all of the following related conditions:
 - a. Reservation of an easement as outlined in section ECDC 18.55.030; and/or Acceptance of a grant of substitute public right-of-way.
 - b. Covenants intended to protect critical areas or otherwise limit future development on the subject property.
 - 2. Monetary compensation. The city council shall condition approval of a street vacation upon satisfaction of the following monetary conditions:
 - a. Payment of appraisal fees as outlined in section ECDC 18.55.XXX; and
 - b. Payment to the city, prior to the effective date of the ordinance, in an amount of up to one-half the fair market value for the subject property unless the subject property was acquired at “public expense” or has been part of a dedicated public right-of-way for 25 years or more, in which case full fair market value shall be paid.
 - 3. Any challenge to one or more conditions imposed pursuant to a resolution of intent to vacate must be brought in Snohomish County Superior Court no later than 30 days following the adoption of the resolution of intent. If such a challenge is successful, the city council shall determine whether to amend the resolution of intent by adopting a different set of conditions or to deny the street vacation in its entirety.

Commented [MJ5]: See PB Options Table – Item 1

Commented [MJ6]: See PB Options Table – Item 2

Commented [MJ7]: See PB Options Table – Item 5

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Chapter 18.55 VACATIONS OF STREETS AND
PUBLIC ACCESS EASEMENTS

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- C. Final decision. If the abutting property owner(s) complies with conditions imposed in the resolution of intent to vacate within the timeframe specified within the resolution, the city council shall adopt an ordinance granting the vacation, provided that the city council shall not be required to adopt the vacation ordinance if it finds, after reviewing the appraisal, that the monetary compensation to be paid to the city is not sufficient to compensate for the public's loss of the subject property. The effective date clause of the ordinance shall be drafted to make the ordinance effective upon recording, and only if the ordinance contains proof of payment received, with the City receipt number indicated on the ordinance. If the city council ultimately determines that the amount of compensation is not adequate to complete the vacation, the City shall reimburse the applicants for the appraisal costs.
- D. Distribution. Within five working days of the city council decision, the public works director shall mail a copy of the notice of decision to the applicant and all persons who submit a written or oral testimony at the city council's hearing. [Ord. 3910 § 3, 2013; Ord. 2933 § 1, 1993; Ord. 2493, 1985].

20190925 Planning Board DRAFT

Street Vacation Code Update – Chapter 20.70 ECDC --> NEW Chapter 18.55 ECDC

Following the public hearing on August 14, 2019, staff indicated options for some of the specific code sections would be brought back for the Planning Board’s consideration. Much of the code update is primarily related to reorganization. Those sections that have been of special interest to the Planning Board are presented below along with a summary of the code section and staff’s recommendation. Optional code language has been provided for Planning Board consideration, should the board decide to go with an alternative to the staff recommendation.

	Existing Code Language	Summary of Issue	Staff Recommendation	Planning Board Option #1	Planning Board Option #2
Monetary Compensation and/or Easement					
1	<p>ECDC 20.70.140.A.3</p> <p><i>3. Adopt a resolution of intent to vacate stating that the city council will, by ordinance, grant the vacation if the owner(s) of property abutting upon the street or alley, or part thereof so vacated, meet specific conditions within 90 days.</i></p> <p>The city may require the following as conditions:</p> <p><i>a. Either:</i></p> <p style="padding-left: 20px;"><i>i. Monetary compensation ...</i></p> <p style="text-align: center;">OR</p> <p><i>b. A grant of an easement to the city in exchange for the easement vacated.</i></p>	<p>RCW 35.79.030 allows the City to receive compensation for the street vacation AND retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services.</p> <p>The way the existing code reads, the City may EITHER receive monetary compensation OR be granted an easement.</p> <p>Staff is proposing to amend the code consistent with the state statute to allow both monetary compensation and the reservation or granting of easements.</p> <p>A review of other jurisdictions has found that the City of Edmonds is the only jurisdiction (of those reviewed) who have the EITHER/OR language with regard to monetary compensation and the reservation of easements.</p>	<p>ECDC 18.55.030</p> <p>Right to reserve easements for the following purposes:</p> <p>A. Public utilities;</p> <p>B. Pedestrian walkway or trail; and/or</p> <p>C. Third-party utility companies</p> <p style="text-align: center;">AND</p> <p>ECDC 18.55.140.B</p> <p>2. Monetary compensation.</p> <p>Added consideration:</p> <p>ECDC 18.55.XXX</p> <p>C. ... appraisal shall take into account any reduction in fair market value associated with the conditions imposed in the resolution of intent</p>	<p>Consistent with existing code, limit conditions to</p> <p><i>Either:</i></p> <p style="padding-left: 20px;"><i>Monetary compensation ...</i></p> <p style="text-align: center;">OR</p> <p><i>A grant of an easement to the city in exchange for the easement vacated.</i></p>	<p>Consistent with existing code, limit conditions to</p> <p><i>Either:</i></p> <p style="padding-left: 20px;"><i>Monetary compensation ...</i></p> <p style="text-align: center;">OR</p> <p><i>A grant of easement to the city or a third party in exchange for the easement vacated PROVIDED THAT any grant of an easement to any third party must be for access or utility purposes</i></p>

Street Vacation Code Update – Chapter 20.70 ECDC --> NEW Chapter 18.55 ECDC

	Existing Code Language	Summary of Issue	Staff Recommendation	Planning Board Option #1	Planning Board Option #2
Monetary Compensation					
2	<p>ECDC 20.70.140.A.3.a <i>i. Monetary compensation to be paid to the city in the amount of up to one-half the fair market value for the street, alley, or part thereof to be vacated unless acquired at "public Expense" then full appraised value shall be paid</i></p>	<p>The proposed code language is consistent with RCW 35.79.030.</p>	<p>ECDC 18.55.140.B.2 b. Payment to the city, prior to the effective date of the ordinance, in an amount of up to one-half the fair market value for the subject property unless the subject property was acquired at "public expense" or has been part of a dedicated public right-of-way for 25 years or more, in which case full fair market value shall be paid.</p>	<p>The Planning Board did not specifically request options related to this language.</p>	
Appraisals – Applicability and Waiver					
3	<p>ECDC 20.70.060.G <i>G. Two copies of an appraisal prepared by a qualified land appraiser with an M.A.I. designation, establishing the fair market value of the street, alley, or part thereof to be vacated. An appraisal is not required if a utility easement only is proposed to be vacated;</i></p>	<p>The staff recommended draft code was updated as shown here, based on discussions with the Planning Board.</p> <p>Additional language will be needed as provided in PB Option 1, should the board decide to limit the vacation conditions to either monetary compensation OR reservation of an easement.</p>	<p>ECDC 18.55.XXX A. Applicability. Where the resolution of intent to vacate includes a compensation requirement, an independent appraisal shall be required. B. Appraisal Fee. (Only the language added for clarity is shown here): For street vacations initiated by City Council, the City shall be responsible for any associated appraisal fees. C. No change proposed D. No change proposed E. Waiver. The requirement for an appraisal and subsequent monetary compensation will be waived if a street vacation initiated by City Council, by resolution, includes a finding that the public benefit accruing from the vacation alone is sufficient to justify the vacation without any monetary compensation to the City.</p>	<p>If the Planning Board determines the granting of an easement and/or substitute right-of-way negates the ability to collect monetary compensation and therefore the appraisal becomes unnecessary, then the following language should be included under the Waiver section of 18.55.XXX:</p> <p>E. Waiver. A waiver from the requirement to obtain an appraisal and provide monetary compensation will be granted if one of the following apply: a. The resolution for a City Council initiated street vacation includes a finding that the public benefit accruing from the vacation alone is sufficient to justify the vacation without any monetary compensation to the City; b. The resolution conditions the street vacation upon the reservation and/or granting of a public easement or substitute public right-of-way to the City of Edmonds [or a third party].</p>	

Street Vacation Code Update – Chapter 20.70 ECDC --> NEW Chapter 18.55 ECDC

	Existing Code Language	Summary of Issue	Staff Recommendation	Planning Board Option #1	Planning Board Option #2
Appraisals – Selection					
4	<p>ECDC 20.70.060.G</p> <p><i>G. Two copies of an appraisal prepared by a qualified land appraiser with an M.A.I. designation, establishing the fair market value of the street, alley, or part thereof to be vacated. An appraisal is not required if a utility easement only is proposed to be vacated;</i></p>	<p>Some board members were looking for alternative options to the City selecting a qualified appraisal. PB Option 1 provides the applicant to select an appraiser from a City approved list.</p> <p>Four of the six surrounding jurisdictions that were compared allow for appraisals selected by the city and at the applicant’s expense.</p>	<p>ECDC 18.55.XXX</p> <p>C. If the City Council adopts a resolution of intent to vacate the subject property, the director shall be authorized to obtain an appraisal of the fair market value of the subject property from a qualified appraiser, taking into account any reduction in fair market value associated with the conditions imposed in the resolution of intent, including but not limited to a condition requiring the dedication of an alternative right-of-way.</p>	<p>C. If the City Council adopts a resolution of intent to vacate the subject property, the director shall be authorized to obtain an appraisal of the fair market value of the subject property from a qualified appraiser, taking into account any reduction in fair market value associated with the conditions imposed in the resolution of intent, including but not limited to a condition requiring the dedication of an alternative right-of-way. The appraiser will be selected by the applicant from a City approved list.</p>	
Condition Challenges					
5	<p>There currently is no code language that details how an applicant may appeal a condition imposed by the City Council in the resolution of intent to vacate.</p>	<p>There is no requirement is state code, nor have other jurisdictions explicitly detailed an appeal process for a jurisdiction’s decision on street vacation conditions.</p> <p>The language regard challenges to conditions imposed in the resolution of intent to vacate will provide applicant clarity on an appeal process where none is provided in state code. This will also provide certainty to the City of Edmonds that the ordinance passed by the City Council will not be challenged and the vacation is completed once the ordinance becomes effective.</p> <p>The staff recommended language provides a 30-day appeal period, which is longer than usual 21-day appeal for land use decisions (RCW 36.70C.040). The Planning Board discussed having a long appeal period which are included Option 1 and 2.</p> <p>Additional language is also provided for Planning Boards consideration further detailing the effects of a challenge to a condition in the resolution of intent to vacate.</p>	<p>ECDC 18.55.140.B</p> <p>3. Any challenge to one or more conditions imposed pursuant to a resolution of intent to vacate must be filed in Snohomish County Superior Court and served upon the City no later than 30 days following the adoption of the resolution of intent. [optional language would be inserted here if PB recommends it] If such a challenge is successful, the city council shall determine whether to amend the resolution of intent by adopting a different set of conditions or to deny the street vacation in its entirety.</p>	<p>60 day appeal period</p> <p>If the City is served with such process before the City Council takes action on the street vacation ordinance, then any street vacation ordinance adopted prior to the condition being deemed valid shall be null and void. If the City has not been served with such process by the date the City Council adopts the street vacation ordinance, then the right to challenge the condition shall be deemed waived even if time remains in the appeal period, PROVIDED THAT any ordinance adopted prior to the running of the appeal period must be preceded by the City’s receipt of the written consent of the petitioner(s).</p>	<p>90 day appeal period</p>



Date: August 9, 2019
 To: Planning Board Members
 From: Jeff Taraday
 Re: Requiring Street Vacation Petitioners to Pay Compensation

The following memo is provided to respond to questions and concerns as to whether it is appropriate to condition a street vacation upon the payment of compensation to the City. I have placed in quotation marks what I understand to have been the gist of the Planning Board's questions. Then I have tried to answer those questions.

“Can the City require abutting owners to pay the City money as a condition of a street vacation?”

Yes.

The legal authority to require such a payment is found in RCW 35.79.030, which provides, in relevant part, as follows:

If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and **the ordinance may provide** that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, **shall compensate such city or town** in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town **may require** the owners of the property abutting the street or alley to **compensate the city or town** in an amount that does not exceed the full appraised value of the area vacated.

RCW 35.79.030 (emphasis added). This statute provides clear authority for the City to require compensation. But the City is not *required* to require





compensation, which brings us to the next question.

“Should the City require abutting owners to pay the City money as a condition of a street vacation?”

This is a **policy question** to be decided ultimately by the City Council. The Planning Board can make a recommendation to the City Council on this policy question. The City Attorney’s recommendation is that the City should require abutting owners to pay for street vacations for various reasons including the following:

1. In most cases, the fair market value of the abutting owner’s property would increase as a result of the street vacation;
2. If no payment is required, abutting owners would receive a windfall relative to other property owners who do not abut a street being vacated;
3. Streets are for the benefit of the general public, and payment to the City for a street vacation would also benefit the general public;
4. If the City does not receive money for a street vacation, in many cases, it would be difficult to articulate the public benefit that would justify the street vacation.

“Doesn’t the street already belong to the Petitioner? If so, why should they have to pay to have the street vacated?”

The general rule is that the abutting landowner will be held to own the fee in the public way in front of his or her property to the center of it, subject to the public easement. § 30:35. Ownership of streets, 10A McQuillin Mun. Corp. § 30:35 (3d ed.). But the title to streets and public ways, whether in the people or a municipality, or in fee or in easement, is held in trust for the public use, both for the purpose of public travel and as a means of access to and egress from abutting property. § 30:37. Title of municipality is that of trustee, 10A McQuillin Mun. Corp. § 30:37 (3d ed.). Thus, the public highways and streets are acquired and held in trust for the use of all the people. For ordinary and general transportation and traffic they are free and common to all citizens. Thus, much is conclusively implied in their acquisition and maintenance, regardless of the estate or title by which they are held. Streets primarily are for the use of the people as a whole, and cannot be diverted for merely local, or private use, or the rights of the public in them unreasonably curtailed or abridged. § 30:39. Paramount state powers, 10A McQuillin Mun. Corp. § 30:39 (3d ed.).

The right to possession, use and control of the street by the municipal corporation is regarded as a legal, and not a mere equitable right, even where the adjoining proprietor retains the fee. But whatever rights or title the city or town may have over its streets, its powers are those of a trustee for the benefit of the public to be





liberally construed for its benefit, strictly construed to its detriment. Whatever the nature of the title of the municipality in streets and alleys, whether a fee simple or only a qualified or conditional fee or a perpetual easement, it is such as to enable the public authorities to devote them to public purposes. The power to maintain and regulate the use of the streets is a trust for the benefit of the general public, of which the city cannot divest itself, nor can it so exercise its power over the streets as to defeat or seriously interfere with the enjoyment of the streets by the public. In other words, as noticed above, in supervising the uses of its streets, a municipal corporation is engaged in a function essentially public and governmental. § 30:41. Municipal powers, 10A McQuillin Mun. Corp. § 30:41 (3d ed.). Hence, whenever a street is vacated, the public loses something of value. Even if that value does not manifest itself in present day use by the public, the rights of the public to use that street in the future are being withdrawn from the public trust. In our opinion, the loss to the public and the gain in the value of the abutting owner's property, can only be justified by a payment of fair market value to the City. This opinion is consistent with the statute which requires that "[o]ne-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town." RCW 35.79.030.



Year	Ordinance No.	Street/Alley	Iniatiator	Easements Resrved?	Compensation	Comments	
1998	3188	237th Place SW	City of Edmonds	Utility (to the City and its lawful franchisees)	\$0	The City Council found that public benefit will be derived from the vacation to better utilize the easement for drainage easements and future utility use and determined that the public purposes outweigh the need for requiring compensation.	
1998	3189	15th Street SW & 100th Avenue S	City of Edmonds		\$0	The vacated right-of-way was adjacent to the Edmonds Cemetery and was vacated in part to support the construction of the columbarium at the cemetery.	
1998	3197	Lunds Gulch Rd	City of Edmonds		\$0	The street vacation for ordinances 3197 - 3208 were initiated by the City of Edmonds. All of the vacated right-of-way were located in the Meadowdale area and most contained slopes in excess of 40%. No compensation was required for any of the vacations because the Council found that, "Due to the public benefits to be derived, the abutting property owners are not required to compensate the City for the vacation of the right-of-way." The public benefit noted in the ordinance included, "...returning the propoerty to the tax roll and relieving the City of the obligation to maintain a right-of-way easement which has no reasonable likelihood of development as a public street thereby creating a public interest which outweighs the necessity to require compensation for the vacation to the City."	
1998	3198	Unnamed	City of Edmonds		\$0		
1998	3199	72nd Ave W	City of Edmonds		\$0		
1998	3200	72nd Ave W	City of Edmonds	Pedestrian/Utility	\$0		
1998	3201	73rd Ave W	City of Edmonds		\$0		
1998	3202	74th Place W	City of Edmonds	Utility	\$0		
1998	3203	75th Ave W	City of Edmonds		\$0		
1998	3204	156th Street SW	City of Edmonds		\$0		
1998	3205	156th Street SW	City of Edmonds		\$0		
1998	3206	158th Street SW	City of Edmonds		\$0		
1998	3207	164th Street SW	City of Edmonds	Utility	\$0		
1998	3208	172nd Street	City of Edmonds	Utility	\$0		
1999	3255	180th Street SW	Citizen		\$3,562		Vacation would have allowed one additional building lot whose value could range from \$30,000 to \$65,000. The abutting property owners agreed to waive subdivision rights created by the vacation right-of-way via a covenant recorded with the vacation ordinance.
1999	3260	218th Place SW	Citizen		\$5,300		Appraised value of \$10,600. Originally dediciated for hammerhead turn-around and the street is now a through street.
2003	3463	7th Avenue S	Citizen/City of Edmonds	Pedestrian/Utility	\$5,454	Clean up of a vacation request and subdivision from 1987. Council considered three compensation options, (1) using the current (2003) land valuation for a total of \$31,050, (2) use of 1993 assessed valuation (<i>when the then current property owner purchased the property</i>) for a total of \$18,468, or (3) use the original 1987 calculation for a total of \$5,454. Since it appeared to be a City oversight that the vacation did not occur in 1987, the City Council chose the 1987 valuation.	

Attachment: Attachment 5: Past Street Vacations Summary (Amendments to Chapter 20.70 (NEW 18.55))

Year	Ordinance No.	Street/Alley	Initiator	Easements Reserved?	Compensation	Comments
2003	3470	Bowdoin Way	City of Edmonds		\$0	Vacated 3 feet of Bowdoin Way adjacent to 8505 Bowdoin Way. The City of Edmonds had sold 8505 Bowdoin Way as surplus property (former site of Five Corners Fire Station). As part of the sale, the City of Edmonds indicated it would vacate the right-of-way. The City Council determined adequate compensation was received from the sale of the property (included in the sales price) and did not require any additional compensation for the right-of-way. Price of the sale unknown, but value was based on the ability to construct 7 units on the property.
2004	3520	174th Street SW	City of Edmonds		\$1,500	This vacation appeared to be clean up of some license agreement from 1973. One-half of the appraised value would have been \$8,000. City Council accepted the reduced payments because, (1) the subject property was burdened by access rights, (2) the prior property owners refused to purchase the site, (3) returning the property to the tax rolls would compensate the City through additional tax revenue, and (4) the owners will incur additional costs to survey and assign the site by lot line adjustment.
2005	3543	Sierra Place	Citizen	Utility	\$3,750	\$3,750 was one-half of the appraised value of right-of-way to be vacated. Covenant recorded restricting use of the adjacent property to one single family residence due to presence of critical areas including stream, wetland, and slope.
2005	3551	Daley Street	Citizen		\$62,500	\$62,500 was half of appraised value. A single-family residence has been constructed on this former right-of-way.
2005	3565	219th Street SW	Citizen	Utility	\$67,731	\$67,731 was half the value of the <i>encumbered</i> right-of-way. The appraisal considered the unencumbered value of the right-of-way to be \$267,000 and the value of the right-of-way with the reserved utility easement to be \$135,461.

Attachment: Attachment 5: Past Street Vacations Summary (Amendments to Chapter 20.70 (NEW 18.55))

Year	Ordinance No.	Street/Alley	Initiator	Easements Reserved?	Compensation	Comments
2007	3647	8th Avenue N	Citizen	Creek Maintenance Easement	\$7,500	The fair market value of the property was appraised to be \$22,500. The City Council reduced compensation below 50% to reflect the costs associated with obtaining an appraisal and the other associated costs of the vacation process, as well as required lot line adjustment and the cost of tree removal, yielding in the City Council's estimation a reasonable compensation to the public of \$7,500.
2007	3662	77th Place W	Citizen		\$1,400	The \$1,400 was more than one-half appraised value. Two appraisals (both paid by the applicant) assumed a total appraised value of \$1,350 and \$1,620. The appraisals were based on the differential values of similarly sized and valued properties, calculated the appraised value based on the incremental difference in property valuations. During the public hearing, the City Council did not feel the appraisals appropriately reflected the value of the property. The applicant had offered to pay the City \$1,400 for the vacated right-of-way. After much discussion on the value of the similarly situated property, the City Council chose to accept the applicant's offer of \$1,400 for the right-of-way as adequate compensation.
2008	3729	Alley between 8th and 9th	City Council	Temporary Construction Easement	\$0	A temporary construction easement was reserved for the construction of a retaining wall north of the vacated easement to be constructed in association with improvements for a 3-lot short plat north of the vacated right-of-way. The City Council found it to be in the public interest to vacate the property without compensation, given its small size (7 1/2 feet in width), its lack of value and utility to the City, the fact that it, except as provided herein (presumably referring to the temporary construction easement), serves no public purpose, and that returning the property to the tax rolls provides a benefit to the City.

Attachment: Attachment 5: Past Street Vacations Summary (Amendments to Chapter 20.70 (NEW 18.55))

Year	Ordinance No.	Street/Alley	Initiator	Easements Reserved?	Compensation	Comments
2016	4028	right-of-way in Civic Field	City Council		\$0	After the City of Edmonds acquired Civic Field from the school district, the City Council initiated street vacations to vacate portions of Edmonds Street, Sprague Street and an unnamed alley that extended through civic field. Utilities are located in Civic Field, but since the City of Edmonds is the property owner, no easements were required with the vacations.
2017	4061	92nd Avenue W	Citizen	Easements for third party utilities	\$92,610	\$92,610 was one-half of the appraised value. The property owners were required to assume ownership of the stormwater facilities located within the right-of-way and grant easements to Olympic View Water and Sewer District, Snohomish County PUD, and PSE. The property owner also had to acknowledge improvements related to fire protection should the property be redeveloped.
2018	4114	Unnamed right-of-way near 231st Street SW	Citizen	Easement for third party utility	\$28,800	\$28,800 was one-half of the appraised value. An easement was required for an Edmonds School District stormwater line located within the right-of-way.
2019	4143	Excelsior Place	Citizen	Utility and Access Easement	\$0	No compensation was required because the City of Edmonds retained easements. Conditions of vacation included (1) retention of public utility easement, (2) construction of a utility access and emergency vehicle turn-around, (3) private access easement for all properties with frontage on the vacated portion of Excelsior Place, and (4) a utility and emergency vehicle access easement and covenant requiring construction of additional access road width to meet South County Fire Lane standards with future single-family development.

APPROVED AUGUST 14th

CITY OF EDMONDS PLANNING BOARD Minutes of Meeting

July 10, 2019

Vice Chair Robles called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Daniel Robles, Vice Chair
Todd Cloutier
Alicia Crank
Roger Pence
Nathan Monroe
Mike Rosen
Carreen Nordling Rubenkönig

STAFF PRESENT

Rob Chave, Planning Division Manager
Kernen Lien, Environmental Program Manager
Jeanie McConnell, Engineering Program Manager
Jerrie Bevington, Video Recorder

BOARD MEMBERS ABSENT

Matthew Cheung, Chair (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER MONROE MOVED THAT THE MINUTES OF JUNE 26, 2019 BE APPROVED AS AMENDED. BOARD MEMBER ROSEN SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

Ken Reidy, Edmonds, said he was present to speak about the proposed street vacation code amendment. As a citizen whose life was dramatically impacted by a recent street vacation, he has a great interest in the proposed change. He said it is important for the Board to understand that, with streets and alleyways, the City has easement rights, but the fee titles belong to the adjacent property owners in most cases. The City's right is called the dominant estate, which is the right to use the easement for egress/ingress. The property owner's right is called the servient estate. Prior to the City opening a street or alleyway, the servient estate gets to use the easement just as they use the rest of their property. This is a constitutional right and the law is well settled. He is concerned that the proposed amendment does not differentiate between street vacations of unopened and opened easements. If the City hasn't used the easement rights for a long period of time, the street vacation should be treated differently.

Mr. Reidy recommended that the process be slowed down so that the citizens have an opportunity to be more involved in the rewrite of this specific code section. It is too important and they need to get it right. He said he has had very little time to review the proposed amendments. He explained that, historically, the City has a provision that, when vacating a street or alley easement, the City can either require a replacement easement for utilities or charge monetary compensation. The Code is very clear that this is an either/or provision. However, the proposed amendment would allow the City to do both. He

expressed his belief that the citizens of Edmonds would prefer the either/or provision and not both. He provided copies of an email he sent to the City Council, asking that the process be slowed down. Again, he asked the Board to read the email and afford the citizens a chance to be involved in the process.

DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD

There was no Director's Report.

UPDATE ON CLIMATE GOALS PROJECT

Mr. Lien provided a status report on each of the goals contained in Resolution 1389, which was adopted by the City Council in 2017.

- **Goal 1 -- The City Council fully supports the Mayor's endorsement of the Mayor's National Climate Action Agenda.** This goal has already been accomplished.
- **Goal 2 -- The City Council has rededicated itself to partner with the City administration and Edmonds citizens to identify benefits and costs of adopting policies and programs for long-term reduction of greenhouse gas (GHG) emissions.** Work on this goal is ongoing.
- **Goal 3 -- Planning Division and Climate Protection Committee will report annually to City Council on municipal and community-wide GHG inventory, starting in 2018.** A report on the GHG inventory was provided to the City Council in 2018. Rather than focusing on the inventory, future reports will focus on different projects or implementations to meet the GHG targets.
- **Goal 4 -- By July 1, 2018, the Planning Division and Climate Protection Committee will establish and recommend GHG emissions reduction targets for both near and long-term.** This work is ongoing. The work to establish the targets and make a recommendation to the City Council is very complex. The Climate Protection Committee has been meeting monthly with a consultant to discuss what the target should be and what it will take to meet the target.
- **Goal 5 -- The Planning Division and Climate Protection Committee will update the City's Climate Action Plan (CAP) and review specific strategies for meeting the GHG emissions reduction target while tying mitigation with adopting measures where possible.** This goal is currently ongoing. The current CAP and GHG emissions reduction targets and strategies have been reviewed and more information will be provided later in the presentation.
- **Goal 6a -- The City accomplishes 100% renewable energy goal for electricity supply to municipal facilities by 2019.** This goal has been accomplished via an energy credit pilot project with the Snohomish County Public Utility District (PUD). All the energy the City purchases from the PUD in 2019 will come from renewable resources. The plan is to continue this work next year, as well.
- **Goal 6b -- Community-wide goal of 100% renewable energy for electricity supply to be achieved by 2025.** This target will be difficult to meet, but recent action by the State Legislature (Senate Bill 5116) includes specific and aggressive targets for being carbon neutral by 2030 and carbon free by 2045. PUD incentives and more public awareness will also help the City accomplish this goal.
- **Goal 7 -- Planning Division and Climate Protection Committee will develop a work plan by November 2018 to include options, methods and financial resources, along with a timeline and milestones to achieve the renewable energy goals.** Goal 6a has been accomplished through the PUD's energy credit pilot project and Goal 6b can be accomplished via State legislation, PUD incentives, and more public awareness.

Mr. Lien advised that the City completed the Greenhouse Gas (GHG) Inventory in 2009 and the Climate Action Plan was adopted in 2010, along with policies in other City documents. He explained that GHGs are gases that trap heat in the

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Board Member Rubenkönig recalled a volunteer service called Waste Warriors that worked the festivals around the area to divert the organic waste from the food waste. Not only did they collect a sizeable amount of compostable waste, but they were also able to educate people on how to sort out what is and is not recyclable. This is an easy strategy, yet it has lost momentum. She suggested that an additional strategy should be added to promote local programs that educate and help citizens make better decisions. She cautioned against making the Climate Action Plan so lofty that it does not accommodate smaller, more realistic programs.

Vice Chair Robles said he is a strong advocate of seeding the record so that people searching the City's website can find the terms that are being discussed by the Board. Regarding Board Member Cloutier's earlier comment related to reducing the amount of energy used for heating and cooling the air, he suggested the City have a policy that the air conditioning does not come on until the temperature reaches 80°.

Vice Chair Robles noted that methane, pentane, hexane and octane are all hydrocarbons, and it is difficult to find equivalency unless a strictly carbon measurement is used. This approach would make it easier to manage the equivalencies. He also suggested that there are other economic methods that could be applied to the trade of carbon, etc.

Regarding Board Member Rubenkönig's earlier question, Vice Chair Robles pointed out that activists are working hard to address this subject. They need to all work together, but it seems like programs often fall away due to lack of funding. However, there are opportunities for communities to exchange value in ways that are not dollars.

Vice Chair Robles commented that the data provided in the report is interesting. He recalled that the Board was recently invited to develop its wish list of metrics for measuring a healthy city that could be injected into the Healthy City Report. With regard to zoning, he pointed out that some commercial zones do not allow live-work spaces on the ground floor. The zoning code also restricts retail uses in neighborhoods causing people to have to drive elsewhere to get what they need. He pointed out that subterranean construction is also an opportunity to address temperature fluctuations. Also, he observed that plastic does not decay for 10,000 years and is made out of carbon, which means that it is sequestering carbon extremely effectively. He suggested the City consider shifting its war on plastic to actually embrace the carbon sequestering capacity of plastics for uses such as plumbing. Polypropylene plumbing can replace copper all day long. The energy required to create and recycle it is superior to copper, yet the City's current code prohibits its use. He summarized that there is a lot the City can do from a code standpoint to address climate control. They need to embrace new technologies and encourage the experts to stretch further.

INTRODUCTION TO EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) 20.70 STREET VACATION AMENDMENTS

Ms. McConnell explained that the proposed amendment would move the street vacation amendments from Chapter 20 to Chapter 18. Chapter 18 is the Public Works Section and already includes provisions related to right-of-way, the street map, etc. The amendment clarifies, reorganizes and adds a definition section. The appraisal process and timing for when an appraisal is required was revised, as what the applicability of the monetary compensation aspect of a street vacation. Lastly, the amendment revises the timeframe required to satisfy conditions.

Ms. McConnell explained that a street vacation is a process used to release a public street, alley, pedestrian and/or vehicular easement that is currently being used or established as something that could be used in the future for a street, alley or easement if it is no longer needed for those purposes. A street vacation could happen through a petition of adjacent property owners or initiated by the City Council. Street vacations do not come before the Planning Board for review.

Ms. McConnell said City staff often receives questions about the potential vacation of unopened alleys so they can be fully used by adjacent property owners rather than being preserved as potential rights-of-way access to be used by the City. She shared an example of an unopened alley and explained that a street vacation is the process that would be used for releasing the right-of-way to a private property owner.

Board Member Rubenkönig asked the difference between an unopened alley and an unopened easement. Ms. McConnell said an alley is classified as a right-of way, and easements are located on top of or encumber a private property. An easement

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reserves a portion of private property for a specific use, where the City actually has rights to alley and street rights-of way. If an adjacent property owner wants to use the right-of-way for private use, he/she would submit a street vacation request in order to have it transfer back to the title for their own property.

Ms. McConnell explained that, while processing several street vacations within the last year, the staff and City Council found that the lack of information in the code and the way the code is laid out has made the process inefficient and even unfair in some cases. The proposed amendments are intended to improve the provisions for both the public and private property owners.

Ms. McConnell advised that, as per the current code, if a street vacation is being proposed via a petition by an adjacent property owner, two-thirds of the adjacent property owners abutting the right-of-way must sign the petition in order for the City to accept the application. In addition, an appraisal is required as part of the application submittal, and the appraiser is selected by the applicant. That means an appraisal must be done before staff has reviewed the application submittal, before it has been determined whether or not an easement needs to be reserved, before it has been determined whether or not a right-of-way would need to be set aside in a different area and before it has been determined if the City Council would even consider the vacation. Because applicants select their own appraisers, each appraisal is different and there is no consistency.

Ms. McConnell said the proposed amendment would push the appraisal further out in the process, after staff has reviewed the application and determined whether an easement needs to be reserved or a right-of-way needs to be set aside in a different area. The appraisal would also be postponed until after the City Council has reviewed and approved the request through a Resolution of Intent to Vacate. In order to make the appraisal process consistent across the board, the amendment would require a 3rd party consultant review. The applicant would deposit funds to the City to cover the cost of appraisal and the City would send out for the appraisal to be completed. Unused funds that were set aside as a deposit would be refunded to the applicant. If a more extensive appraisal is required, the applicant may be required to provide additional funding. She summarized that any cost to the applicant would cover just the cost of the appraisal and nothing more. She summarized that pushing the appraisal further out in the process would allow the appraiser to consider easements and anything else that might be happening on the property or how else it might be used.

Board Member Monroe asked what the appraisal is used for, and Ms. McConnell answered that it is used to determine whether or not there should be monetary compensation in order for the right-of-way to be transferred to adjacent properties. Currently, the compensation would be equal to ½ of the appraised value. Ms. McConnell clarified that an unopened alley is considered right-of way. It is not property an adjacent property owner can use because the City has jurisdiction over it. However, a property owner would be expected to maintain any vegetation within the alley.

Board Member Pence questioned the policy behind requiring abutting property owners to pay the City compensation in the case of an unopened alley that has no value to the City. For example, when the block at 7th and Alder was platted, the right-of-way was gifted to the City for a potential future alley. The City did not purchase the land, and it was never developed as an alley. It is now a burden to the abutting property owners to the extent that it must be maintained. Ms. McConnell said the compensation requirement would depend on whether or not the land has value to the City. She explained that, even if the topography does not allow for actual travel, oftentimes, current or future utilities will run through the alleyways. It is important to keep in mind that the original intent was to have vehicular travel. However, as development occurred and other main corridor streets improved, the alleys were not always developed. The value of the property is looked at through the appraisal process. The regulations in the City's code mimic State law with regard to vacation of streets.

Board Member Pence commented that a property being vacated ought to have some functional value to the City in order to justify charging a property owner for obtaining title to the land. In the case of an unopened alley, which has never provided any utility to the City and is unlikely to do so in the future, he would say the value of the property to the City is zero. That should be reflected by the appraiser. Ms. McConnell responded that if an appraiser did find value to a property, the City would not be able to gift public land to an adjacent property owner. Therefore, monetary compensation is a necessary component in many street vacations.

Ms. McConnell advised that the current code allows the City to either accept monetary compensation or reservation of an easement to the City. For example, if the City needs to retain an easement for utilities running through the property, there is no ability to require monetary compensation, too. She explained that through the review and appraisal process it may be

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determined there are reasons for monetary compensation in addition to an easement, and the proposed amendment would allow for both if determined necessary or appropriate.

Ms. McConnell explained that with a Resolution of Intent to Vacate there are often certain conditions that must be met. For example, utilities may run through a right-of-way, in which case it would make sense to do a vacation with a reservation of an easement. In this case, the easement would show up in the Resolution of Intent to Vacate. Currently, the code states that any conditions must be met within 90 days after approval of the Resolution of Intent to Vacate. The proposed amendment would retain the 90-day compliance requirement, but add “unless otherwise stated in the resolution.” The amendment leaves the compliance timeline open for more complicated street vacations that involve elements that take more time. The resolution can establish a timeframe that is achievable.

Board Member Monroe asked if the applicant is responsible for determining the easements the City needs. Ms. McConnell answered that they do not determine the easements, but conditions may be placed in the Resolution of Intent to Vacate that require certain easements to be established. They are not always easements for the City; sometimes other utility districts need access easements to neighboring properties. It can take time to secure the easements, and sometimes legwork is required by the applicant to meet the conditions.

Board Member Crank asked if the proposed amendment would allow the timeline to be restated or is it established at the time the resolution is adopted. Ms. McConnell said it is established by the resolution and cannot be restated later if the applicant needs more time to meet the conditions.

Ms. McConnell said staff anticipates the Planning Board will conduct a public hearing on the proposed amendments on August 14th, followed by a Planning Board recommendation to the City Council. The City Council will also hold a public hearing before taking final action.

Board Member Pence asked Ms. McConnell to respond to the concerns raised earlier in the meeting by Mr. Reidy. Ms. McConnell said she hopes that his concerns and questions were answered during the presentation. There will be opportunities for public comment at the public hearings before both the Board and the City Council.

Board Member Monroe asked if the City has selected a third-party appraiser. Ms. McConnell answered that a third-party appraiser has not yet been selected. As per the current peer-review process, the City puts out a proposal for various consultants. The proposals are then reviewed and a consultant is selected for an on-call contract. Board Member Monroe observed that the consultant would work for the City. Ms. McConnell said the appraiser would work for both parties and provide a consistent review for every application that the City receives. Board Member Monroe commented that the appraiser would likely view the City as his/her client rather than the applicant. Ms. McConnell said the goal is consistency and the ability to review every application in the same manner. Board Member Monroe asked about the typical cost of an appraisal, and Ms. McConnell answered that the deposit amount is around \$5,000, but the appraisal could be less or more, depending on the variables.

Board Member Monroe commented that, typically when a property changes hands, both the buyer and the seller get an appraisal. They compare the two appraisals and negotiate a deal. Based on the proposed amendment, the City would hire the expert. He asked if the property owner would have any recourse if he/she disagrees with the appraisal done by the City’s consultant. Ms. McConnell said that is not currently addressed in the code, and Board Member Monroe suggested that a provision be added.

Board Member Monroe said he is not comfortable with the City requiring compensation for a right-of-way it does not use. The proposed amendment could require both easements and compensation. He asked how much compensation the City received in 2018 for street vacations. Ms. McConnell agreed to provide that information to the Board prior to the public hearing on August 14th.

Board Member Pence said when he interprets the term “3rd party appraiser” to mean the appraiser would not be a tool of either the 1st or the 2nd party. He/she would be a neutral person. He suggested the best way to achieve a 3rd party appraiser would be to have one agreed to by both the applicant and the City. Otherwise, it’s not a 3rd party, but just the City’s appraiser.

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Board Member Rubenkonig reviewed that the existing code allows the City to require either monetary compensation or the reservation of easement to the City, and the proposed code would allow the City to require both. She suggested it would be better to use “and/or” instead of “and.” Ms. McConnell said the intent was to allow one or the other or both.

Board Member Rubenkonig asked Ms. McConnell to explain the difference between an open easement and an unopen easement. Ms. McConnell said the City does not distinguish between open and unopen easements. Easements typically encumber a private property and establish the area for use for a specific purpose such as a utility line. When they talk about alleys and streets, they are talking about right-of-way versus easements. She provided an example of an alley right-of-way that is not opened to vehicular traffic. Because there is no street that connects 7th Avenue to 8th Avenue, the City would consider it an unopened right-of-way because vehicles cannot pass from one end to the other.

To clarify further, Ms. McConnell said the street vacation process specifically deals with vacating right-of-way. It could deal with vacating an easement if the easement was used specifically for pedestrian or vehicular travel, but these requests are uncommon. Most street vacation requests are for actual right-of-way to be vacated.

Vice Chair Robles said he was impressed with Mr. Reidy’s proactive approach. That is how he wishes notifications could occur. He wants to avoid situations where multiple public meetings have been held, but citizens don’t show up to provide input until the last public hearing. Information needs to be provided to the community way in advance so citizens have a clear understanding of how an issue might impact them. Perhaps they need a better notification process. Ms. McConnell asked if he is referring to a better notification process for code amendments specifically or notification when a street vacation application comes in. Vice Chair Robles said he was referring to the public review process for code changes. Mr. Lien pointed out that ECDC 20.03 outlines the public notice requirements that apply to development projects and code updates. For public hearings, notice is provided at least 14 days before the hearing. Notices are published in the newspaper of record (The Everett Herald) and posted at City Hall, the Public Safety Building, the library, and on the City’s website. Public notice is also required for street vacations. The notices are posted in the places mentioned above. For project specific applications, notices are posted on site and sent to property owners within 300 feet. Vice Chair Robles suggested that the notification process should be modernized to include electronic notification. He encouraged the City to reach out a little deeper and find other ways to notify the public.

Vice Chair Robles commented that technology allows for shared data bases that can be accessed securely by broad groups of people. However, it will take some bold visioning on the part of the City to accommodate. The idea that they need one appraiser to streamline the process could be challenged now where it wasn’t in the past. Ms. McConnell said she is unfamiliar with the appraisal database he is referring to and cannot speak to that. Vice Chair Robles agreed to provide information about the technology he referenced.

Vice Chair Robles asked if current easements and rights-of-way will accommodate 5G equipment. If so, will utilities require payment for the use of the 5G access. He asked if there are other ancillary revenue streams that would taint the revenue model on the easements. Ms. McConnell said the 5G process is a completely different process, and anything related to it would be handled under a completely different code chapter. The proposed amendments are specific to street vacations. With any use of the right-of-way by a utility, the continued use of the right-of-way or area would be reviewed during a street vacation process and easements would be established as needed.

Board Member Rosen said his understanding is that the City Council, in general, is going to take the publication engagement process on a much more global scale. Council Members Teitzel and Mesaros have agreed to lead this effort. Perhaps the Board’s thoughts could be part of that discussion.

Board Member Rubenkonig observed that once a street vacation agreement is approved, the City can tax the property owner for the additional land they own.

~~REVIEW OF EXTENDED AGENDA~~

~~Vice Chair Robles reminded the Board of their joint meeting with the Architectural Design Board on July 24th. The August 14th meeting will include an update on the Ruckelshaus Center Report (RoadMap Project) and a public hearing on the street~~

APPROVED

APPROVED AUGUST 14TH

CITY OF EDMONDS PLANNING BOARD Minutes of Meeting

July 24, 2019

Chair Cheung called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

PLANNING BOARD MEMBERS

PRESENT

Matthew Cheung, Chair
Daniel Robles, Vice Chair
Nathan Monroe
Carreen Nordling Rubenkönig
Mike Rosen
Conner Bryan, Student Representative

PLANNING BOARD MEMBERS

ABSENT

Todd Cloutier (excused)
Alicia Crank (excused)

ARCHITECTURAL DESIGN

BOARD MEMBERS PRESENT

Maureen Jeude
Cary Guenther
Joe Herr
Bruce Owensby
Kim Bayer

ARCHITECTURAL DESIGN

BOARD MEMBERS ABSENT

Tom Walker
Lauri Strauss

STAFF PRESENT

Rob Chave, Development Services Manager
Mike Clugston, Planner
Jerrie Bevington, Video Recorder
Karin Noyes, Recorder

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

Ken Reidy, Edmonds, said he was present to follow up on the comments he made at the July 10th meeting. He observed there seemed to be some confusion between a term he used (unopened easements) and a term the City used (unopened alleys). As per Page 63 of the July 10th Planning Board Packet, the term subject property means the “street, alley, easement or portion thereof sought to be vacated.” It is important for the Board to understand that the photograph staff displayed that evening as an “unopened alley” is the same thing he was referring to as an “unopened easement.”

Mr. Reidy reported that there have been three street vacations over the last 3 years. The 1st easement started in 2016 and involved the vacation of an easement that was used by the City to open a street. The City Council required the reservation of multiple easements and maximum compensation of \$92,610. One of the easements that was required was to Olympic View Water and Sewer District despite the fact that the franchise contract had expired in 2014. The 2nd easement was a vacation of another easement the City had used to open a street and involved no payment in compensation but multiple easements. The 3rd easement was vacation of an easement the City had never used. In that case, the City Council required the property owner to grant an easement to the Edmonds School District, who had put a pipe in the easement area with a permit. They also made the property owner pay \$28,800 in compensation.

Mr. Reidy pointed out that, in the great majority of cases, title to the property underlying a street or alley belongs to the abutting property owner. The City has an easement right to use that property. While there are times when the City does own the property that a street or alley is on, these instances are rare. It is even rarer for those types of streets to be vacated

because the City owns title to the property. The law in Washington State is well settled that the fee title to the streets and alleys rests in the possession of the abutting property owners. City staff mentioned title transferring back to the abutting property owners, but this is not what happens when an easement is vacated because the property owners already own the title. A question was raised about what an appraisal was used for, and staff indicated the compensation was paid to have the right-of-way transferred over to the adjacent private property owner. Again, there is no transfer, the City is simply releasing its easement interest in the property. Staff also said that if an appraiser determined that the property had value, the City would not be able to gift public land to an adjacent property owner. That is not an issue because the adjacent property owner already owns the title and there is nothing to gift.

Mr. Reidy said City staff also represented that it is not the property owner's property if there is an unopened alley behind your home. Staff stated this is not property you are able to use because it is under the City's jurisdiction. However, if the City is not using its easement rights, the owner of the property can use the property. For example, the Washington State Supreme Court stated in *Nystrand vs. O'Malley* that the use by the fee title owner in extending his garage into the area, planting trees and hedge and constructing a bulkhead was not inconsistent with the public's easement since the right to open a street for the public's use had not been asserted by the City of Seattle.

Mr. Reidy encouraged the Planning Board to ask staff to provide an overhead photograph at the August 14th public hearing of the same unopened alleyway that they showed last time, but just one block to the east. The Board will see multiple uses of that unopened easement, including buildings, in that photograph. In conclusion, he asked that the Board consider having staff correct the information that was presented to them on July 10th. This code section is very important, and the citizens should have an opportunity to be involved in the rewrite.

DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD

Chair Cheung referred the Board to the Development Services Director's Report that was provided in the packet. There were no comments or questions from the Board.

JOINT MEETING WITH THE ARCHITECTURAL DESIGN BOARD (ADB): DISCUSSION ON ADB ROLES AND DESIGN REVIEW PROCESS

Mr. Chave recalled that the Planning Board met with the ADB in December of 2017 to discuss design review and how the ADB process works. As a result of this discussion, the ADB had a few discussions at subsequent meetings about design review, what they saw their role being going forward, and how the design review process could be adjusted to reflect some of their ideas. He referred to the materials provided in the packet, which included information that was presented during the ADB's discussions.

Mr. Chave reviewed that design review has occurred in Edmonds for at least four decades. At one time, it was pretty open ended. There were guidelines, but there were no standards in the code to guide design. At that time, the ADB felt it had a lot of discretion on how to approach project approval. That changed in 1993 with the Washington State Court of Appeals Case *Anderson vs. Issaquah*. Issaquah was using a design review process based on the Edmonds model and the problem the court saw was that applicants really didn't know how their projects would be approved. They had no certainty or predictability, and they often ended up going back and forth before a project could be approved because the language used in the codes was quite vague and subject to multiple interpretations. The court saw that as arbitrary and capricious decision making, which was not something a City was able to do.

Mr. Chave said that, once that case was decided, Edmonds realized it needed to change its approach to design review. Going forward, the City first adopted a set of design guidance as a stop gap, but the ultimate solution was to put more specificity into the codes, including clearer design standards and information about how a project would be measured and decided. Over the years, design standards have been adopted for specific zones and/or areas. Before *Anderson Vs. Issaquah*, the ADB design professionals talked to project proponents and there was a fair amount of give and take. The ADB felt it had some control over the ultimate design that resulted. Because of *Anderson vs. Issaquah*, that control eroded for the reasons stated by the court and came back in the form of standards in the code. The product of that, however, has been that when the ADB sees a project proposal, the applicant has already done due diligence to review the codes and standards and arrived at a design

APPROVED

APPROVED SUBJECT TO AUGUST 28TH

CITY OF EDMONDS PLANNING BOARD Minutes of Meeting

August 14, 2019

Chair Cheung called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Matthew Cheung, Chair
Daniel Robles, Vice Chair
Alicia Crank
Nathan Monroe
Mike Rosen
Roger Pence
Conner Bryan, Student Representative

STAFF PRESENT

Rob Chave, Planning Division Manager
Jeanie McConnell, Engineering Program Manager
Jeff Taraday, City Attorney
Jerrie Bevington, Video Recorder
Karin Noyes, Recorder

BOARD MEMBERS ABSENT

Todd Cloutier (excused)
Carreen Nordling Rubenkönig (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER MONROE MOVED THAT THE MINUTES OF JULY 10, 2019 AND JULY 24, 2019 BE APPROVED AS PRESENTED. BOARD MEMBER CRANK SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

There were no audience comments during this portion of the meeting.

DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD

Chair Cheung referred the Board to the Development Services Director's Report that was provided in the packet. There were no comments or questions from the Board.

PUBLIC HEARING REGARDING AMENDMENTS TO EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) 20.70 – STREET VACATIONS

Ms. McConnell explained that the street vacation provisions currently reside in ECDC Title 20.70, and the proposed amendment would relocate them to ECDC Title 18, which is the Public Works section. The amendment also clarifies and reorganizes the provisions and adds a definitions section. The appraisal process and timing provisions were revised, as were

Attachment: Attachment 8: August 14, 2019 Planning Board Minutes Excerpt (Public Hearing) (Amendments to Chapter 20.70 (NEW 18.55))

the provisions related to applicability of monetary compensation. Lastly, the timeframe was modified to satisfy conditions. Specifically, the proposed amendments:

- Move Title 20 to Title 18 (Public Works Section).
- Change the review lead from Planning Division to Public Works Division.
- Add a new definition section (ECDC 18.55.005) to provide additional clarity.
- Revise Section 18.55.015.D to reflect the types of plans and other documents needed for the application.
- Add a new Section 18.55.030, which gives the City the right to reserve easements for pedestrian walkways and trails.
- Add a new appraisal section (18.55.XXX) to address timing of appraisal and collection of fees for 3rd party appraisal.
- Add Section 18.55.140 to clarify the processing of street vacations, allowing the ordinance to address timing by which the conditions need to be met, establishing compensation of the area to be vacated based on the appraisal, and giving the City Council the ability to not adopt a vacation ordinance based on review of the appraisal should they choose.

Mr. McConnell explained that a “street vacation” means that the public is letting go of, or vacating, the public interest in a property. After a street, alley or easement (pedestrian and/or vehicular) is vacated, the public no longer has a right to use the property for access. Street vacations can be initiated by private property owners or the City Council. As per Revised Code of Washington (RCW) 35.79.040, *“If any street or alley in any city or town is vacated by the city or town council, the property within the limits so vacated shall belong to the abutting property owners, one-half to each.”*

City Attorney Taraday shared a tool he learned at law school called a “Fee Simple Bundle of Rights,” which is used to illustrate the concept of real estate ownership. He explained that real estate ownership, in actuality, is the ownership of a number of potential rights of land, and the largest bundle of rights (sticks) available for private ownership is called the “Fee Simple Bundle of Rights.” Fee simple ownership means that the property owner owns every possible right that pertains to the real estate. If someone has the underlying fee, it might mean that they own just one tiny right or stick and the rest have been transferred via dedication. It is important to understand this concept in the context of street vacations.

City Attorney Taraday explained that in the vast majority of instances an abutting owner owns the underlying fee. Therefore, if the public’s interest in a street ever goes away, the City doesn’t deed the property back to the abutting property owner because they already have a reversionary interest. Instead, the City vacates the dedication that had been on the property. He explained that a dedication, which is what creates a street, is defined in the subdivision statute as, *“the deliberate appropriation of land by an owner for any general and public uses, reserving to himself or herself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.”* Thinking of that definition in the context of the “Bundle of Rights” concept, it is important to understand that an owner cannot take advantage of many of those rights by having the underlying fee in the street. Property owners cannot exclude people from the street, sell the street, occupy and/or use the street without the City permission, or get a bank loan using the street as collateral. He summarized that when a dedication creates a street, many of the sticks in the bundle are being taken out of the bundle and given to the public. While there are some sticks left in the bundle that is owned by the abutting property owner, the majority of the sticks are now owned by the public.

Regarding the Board’s earlier question about whether the City can or should require monetary compensation for street vacations, City Attorney Taraday referred to two court cases that clarify the issue. The first is *Nystrand vs. O’Malley*, a 1962 Washington Supreme Court decision, which was referenced in Mr. Reidy’s comments at a previous meeting. He read the following quote from the case, *“The use by the plaintiffs in extending their garage onto the area, planting the trees and hedge and constructing the bulkhead was not inconsistent with the public’s easement since the right to open the street for the public’s use had not been asserted by the City.”* In this case, the dispute was between two neighbors and did not involve a city. One neighbor felt he had the right to use the street in a particular way, and the other was saying he didn’t have the right. The city did not take a position and was not party to the case in any way. Because the City did not participate or assert its own rights, the case makes it sound like the abutting property owner has more rights than he/she actually has. The second case is *Baxter Wycoff vs. the City of Seattle*, a 1965 Washington Supreme Court decision. He read the following quote from the case, *“The lack of rights of the abutting owner to so use the street in front of his property does not depend on his interference with an actual or proposed public use of the street. The abutting owner simply has no legal right to make this*

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kind of use of the dedicated public street unless an ordinance expressly authorizes permits for such use to be issued by the City even though no member of the public is inconvenienced by the private use.” In the latter case, a city is asserting its right to hold the property in trust for the public. When you consider the context of how they came before the court (one involved a city and the other did not), it explains why the law was articulated so differently. He shared another quote from the 1965 case, *“The abutting owner has no right to build permanent structures in the street nor to set up storage yards therein for private business purposes. Assuming that such power exists, the granting of permission to a private person to so use the streets is totally within the discretion of the city.”* Going back to the bundle of sticks. City Attorney Taraday summarized that there are not a lot of legal rights left to the underlying owner once a street has been dedicated to the public. For that reason, streets are not counted as part of the lot size when a property is appraised.

City Attorney Taraday referred to a 1989 Washington Court of Appeals case, *City of Seattle vs. ?? Land Company*. The older streets in Seattle have glass tiles with space underneath that are frequently attached to basements of buildings abutting the street. Property owners pay the City of Seattle to use that space. In this case, a property owner claimed that, as the abutting owner, he had the right to use that space as long as it wasn't interfering with the public. He argued that that *“other jurisdictions have held that where the fee is in the abutting owner, the City may not charge the abutting landowner rent for the use of such space.”* The court, however, determined that, *“To the extent that these authorities so hold, that is not the law in Washington.”*

City Attorney Taraday summarized that case law makes clear the extreme limitations placed on abutting owners within the context of a street dedication. On the other hand, a street vacation has a lot of value to an abutting property owner because all of the rights that applied to the street dedication would be given back to the property owner. All of the rights (or sticks) have value. Anytime they go back and forth between parties, there should be some transaction to compensate for the transfer of property.

City Attorney Taraday read from Washington State Constitution Article 8 Section 7, *“No county, city, town or other municipal corporation shall hereafter give any money or property or loan its money or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm or become directly or indirectly the owner in stock in or bonds of any association, company or corporation.”* He said that while there is not a case that directly addresses this constitutional provision in the context of a street vacation, it is his opinion that City should require compensation for a street vacation because it would be considered a gift of public funds or property not to. The rights (sticks) are owned by the public. If the City gives them back to the property owner without compensating the public for the loss of those sticks, it would be a gift of public property, which violates Article 8 Section 7 of the Washington State Constitution. The State uses a two-prong analysis to determine if a “gifting” has occurred. The first is, are you trying to carry out a fundamental purpose of government, and he can't see any argument that giving property rights back to a private citizen would be classified as a fundamental purpose of government. Secondly, the court focuses on the consideration received by the public for the expenditure of public funds and the intent of the appropriating body. The court would look at what consideration the City received for giving the rights (sticks) back, and he believes having the rights appraised is appropriate. Appraisers are trained to measure the differences in fair market value between a before and after situation.

Board Member Pence pointed out that the City does not pay compensation when it acquires “bundle of sticks” when plots are dedicated. At the time of a subdivision, developers are required to gift street dedications to the City to provide access to the lots. He understands City Attorney Taraday's viewpoint that street dedications are owned by the City and have value and that abutting property owners who have reversionary interest in the properties should provide compensation if the streets are vacated by the City. However, it is important to note that the City didn't pay to acquire the street dedications in the first place. City Attorney Taraday responded that consideration doesn't have to be identical in terms of flowing both directions. The consideration the original owner gets is an approved plat. While it is true that the City doesn't pay cash for the streets that are dedicated, it approves the plats and the owners profit from the approval. The only way you can get a subdivision approved is to transfer those sticks (rights) to the City. Once they are owned by the public, it is not relevant any more how they got to be in the public's hands. What is relevant is, should they be given back, and if so, why?

Board Member Pence summarized that the City acquires sticks within the public right-of-way, and its payment is the administrative act of approving the subdivision. City Attorney Taraday agreed that is one way to look at it. It is pretty clear that a developer dedicates property for streets in order to get a subdivision approved.

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Board Member Monroe observed that the City sets the value of those rights at zero when they enter into negotiations with a developer of a subdivision, but then they want to sell them back for fair market value. City Attorney Taraday responded that the City does not establish a value when the property is being dedicated for streets as part of a subdivision application. No money changes hands at that point. Not all consideration is in the form of cash.

Board Member Monroe commented that when a street vacation is granted, it expands a property and property owners are then required to pay taxes on the additional land. He asked if that would be enough compensation to the City to warrant approval of a vacation request. City Attorney Taraday said his opinion is that every property owner pays taxes, but not every property owner gets to have the street in front of their property back. He cautioned that if the City were to vacate every potential property without requiring any compensation, some residents in the City would get a windfall and others wouldn't. It wouldn't be fair to distribute public property unevenly so it goes to some people but not to all. His view is that the fair approach would be to compensate the public for the loss of those rights. The current code allows the City to obtain compensation, but State Law allows the City to require higher levels of compensation than the code currently provides for. It also doesn't force the City to make an either/or choice between an alternative easement or cash compensation.

Board Member Monroe summarized that City Attorney Taraday's position is that paying taxes on the newly acquired property would not address the concern about the gifting of public funds. He asked if there are other states that do not require money to change hands. City Attorney Taraday was unable to answer the question but explained that it is a Washington State constitutional provision.

Board Member Rosen commented that a street vacation could result in a property owner acquiring land that he/she does not want and is not equipped to pay taxes on, and this could cause a hardship or financial burden. City Attorney Taraday emphasized that no one would ever be forced to seek a street vacation. Most street vacations are initiated by a petitioner, who is the abutting owner who happens to want the property. Even if the City Council initiates a street vacation, it would not take affect until compensation is received. If the appraisal comes back higher than a property owner anticipates, he/she can pull the plug on the street vacation. No one would ever be forced to follow through. Board Member Rosen asked what would happen if one of the 10 property owners along an alley doesn't support the vacation. City Attorney Taraday said it would depend on the location. Highly motivated neighbors might be willing to pick up someone else's tab. Another scenario is that just half of the block could be vacated. However, he does not foresee the City would ever allow a checkerboard pattern of street vacations. Continuity would be required.

Chair Cheung asked if the appraisal would be based on value to the City or the abutting property owner. There must not be a whole lot of value to the City if they are willing to give it away. All the City would lose is the public right-of-way. City Attorney Taraday recommended the Board seek feedback from an appraiser to provide specifics on how an appraisal would be done. He knows that when the City acquires right-of-way from an abutting property owner in order to widen a street, the property is appraised in the before and after conditions, and any damages the dedication might cause to the property are taken into account when determining how much the City must pay the abutting property owner. He suspects that a similar process would be used in street vacation situations, too.

Board Member Monroe referred to proposed Section 18.55.040.B, which states that *"The city shall not proceed with a city-council initiated vacation if the owners of 50% or more of the lineal footage of property abutting the subject property file a written objection."* He asked if this provision implies that the City could force property owners to assume ownership of the land. City Attorney Taraday said that, as proposed, the decision to not proceed with a vacation would occur earlier in the process and before there is a Resolution of Intent. If 40% of the abutting property owners object, his experience tells him the City Council would not approve the street vacation. If the Council does approve a street vacation in this situation, a certain dollar amount would have to be paid to the City in order to finalize the transaction. The 40% who object would not be required to pay the compensation amount, in which case, the 60% in favor could either withdraw their request or pay the entire compensation and the property owners in opposition would get a windfall. Board Member Monroe asked who would own the properties, and City Attorney Taraday explained that it doesn't matter where the money comes from. The properties would revert back to the apparent abutting property owners. Board Member Monroe voiced concern that the 40% who object could end up with a higher tax bill for property they didn't want. City Attorney Taraday agreed that is possible, but the likelihood of that being a significant amount of money is small. Vice Chair Robles thanked City Attorney Taraday for clarifying that a property owner would not be forced to purchase a street vacation. As far as unjustly receiving a windfall,

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citizens are already subjected to windfalls and judgment through the course of rezones, code changes, etc. He is not sure that argument would be strong in this case.

Vice Chair Robles asked if fair market value assumes that anyone could bid on a 10-foot strip of right-of-way. City Attorney Taraday answered that an appraiser would define fair market value as the price at which a reasonable, willing and able buyer and a reasonable, willing and able seller are likely to enter into a transaction. This is typically determined by looking at comparable sales in the area. The properties are analyzed and a judgment is made to come up with a price per square foot for the land. Vice Chair Robles questioned how the fair market value would be established for a 100 square foot area in the middle of property abutted by two unwilling owners. It's attached to someone's property, which gives it value. A 100 square foot piece of land does not have any value on its own. City Attorney Taraday said it would have some inherent value, but Vice Chair Robles' question is more about whether an appraiser in this context would look at an assemblage premium. For example, an owner of a lot that is 9,500 square feet in size might request a street vacation because he/she needs an additional 500 square feet in order to subdivide the property into two, 5,000 square foot lots. The City would expect an appraiser to take into consideration that the street vacation would enable the property owner to get another lot worth of value. On a per-square-foot basis, 501 square feet might not be a lot of money. However, a vacant, buildable lot in Edmonds is worth quite a lot.

Vice Chair Robles asked if an abutting property owner could list the street vacation as an amenity to the property when it is sold in a real estate transaction even if he/she has not exercised that right. City Attorney Taraday explained that the City Council has complete and total discretion to approve or deny a street vacation, and there are no criteria. The City Council does not have to provide a reason for the denials, either. He does not think anyone would want to stake a real estate purchase on this potential opportunity. Vice Chair Robles commented that the appraiser would also be making a speculative argument that the 80 square feet of land has value. City Attorney Taraday responded that, once an appraisal comes back, a property owner can decide to pay the compensation to have the extra land added to his/her lot or leave the land as is.

Vice Chair Robles acknowledged that a property owner would not be forced to pay the compensation, and he asked if having a third-party appraiser to identify a transaction's value, who it is valuable for, and how the money is assigned would be a positive thing or confuse the matter more. City Attorney Taraday said he views the independent appraiser as being a key part of ensuring fairness. When appraisals come in for street vacations, City staff has noted there is too much variation in terms of what the City will receive. It is unfair that some people are submitting junk appraisals and paying hardly anything, and other people are doing it right and paying a fair amount of compensation. That disparity should not exist. The City can create a system where everyone is playing by the same rules and the appraisals are being done the same way. This provides confidence that a disparity in price is not because a completely different methodology was used. This is preferable to letting property owners choose whoever they want to do the appraisal. He said he and Ms. McConnell have given some thought to a process that would allow a property owner to have a second appraisal if they don't like the initial one.

Ms. McConnell continued her presentation by pointing out that most of the street vacations that come before the City are initiated by private citizens versus the City Council. Petitioners understand that an appraisal is required and that compensation could potentially be necessary for the vacation to be completed. State Law requires compensation to the City in an amount equal to one-half or the full amount of the appraised value, which means that an appraisal needs to be done. In the existing code, an appraisal is the minimum application requirement and the appraiser is selected by the petitioner. As discussed at the last meeting, having that be a minimum application requirement means that the appraisal is being done before the City Council has determined it would even consider the property for vacation and before any easement requirements have been identified that would devalue the property. The proposed code moves the appraisal requirement to later in the process after staff has completed review and the City Council has approved a Resolution of Intent to Vacate. A requirement for a third-party appraiser was incorporated into the code, and the petitioner would be responsible for covering that cost. She noted that the current code also requires the petitioner to cover the cost of the appraisal.

Ms. McConnell shared some ideas for how to address situations when a petitioner does not agree with the independent appraisal. The ideas include:

- The petitioner could select an alternative appraiser from a list provided by the City. The list would have at least three names on the list.
- The petitioner would pay for the alternative appraisal, as well as the initial independent third-party appraisal.

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- Both appraisals would be included in the City Council packet, along with the street vacation ordinance and the City Attorney's analysis of the differences between the two appraisals.
- The City Council would decide the compensation amount using the two appraisals as brackets for their discretion.

Ms. McConnell explained that RCW 35.79.030 states that compensation to the city or town shall be in an amount equal to one-half the appraised value of the area so vacated or at an amount not to exceed the full appraised value, which applies if the street or alley has been part of a dedicated public right-of-way for twenty five years or more or if the subject property or portions thereof were acquired at public expense. The City's existing code states that the City can accept monetary compensation or reservation of an easement to the City. The proposed code would state that monetary compensation and allowance for reservation of easements are both possibilities. The current code limits the compensation amount to one-half the appraised value, and State Law allows the City to accept the full appraised value.

Ms. McConnell said that, as per the existing code, certain conditions can be placed on the City Council's approval of a Resolution of Intent to Vacate such as reservation of certain easements. The code requires that the conditions must be met within 90 days of approval of the Resolution of Intent to Vacate. The proposed amendment still has a 90-day requirement for compliance, but adds a provision that allows some flexibility if otherwise stated in the resolution. If there are extenuating circumstances, it might take more time for a petitioner to comply with the conditions, and the proposed amendment would allow the City discretion to grant an extension.

As requested by the Board, Ms. McConnell briefly reviewed the 2018 compensation history, noting that one street vacation was initiated in 2018 by an abutting property owner. The owner paid half of the appraised value, which was \$28,800. The property owner approached the request knowing about the compensation requirement. They fell under the existing code, which meant an appraisal had to be done before an application was made. This is indicative of the types of street vacation requests the City receives.

Ms. McConnell reviewed that the proposed amendments were introduced to the City Council Planning, Public Safety and Personnel Committee on July 9th and the Planning Board on July 10th. The Planning Board will conduct a public hearing tonight and forward a recommendation to the City Council. The item is tentatively scheduled for a public hearing and final decision by the City Council on September 17th.

Ken Reidy, Edmonds, commented that the discussion about the "Fee Simple Bundle of Rights" did not included a discussion about opened and unopened easements. When an easement is not being used by the City to open up a street or alleyway, the fee title owner of the property has rights to use the property. Mr. Taraday read about those rights in court case Nystrand vs. O'Malley. He said there are numerous examples all over the City where property owners use the right-of-way when the City hasn't put in a street or alley yet. He specifically referred to a situation where someone sold their servient estate ownership interest to a neighbor, which is another bundle of sticks. He summarized that the rights of the two are not absolute. The servient estate also has rights, and that's really important to appreciate.

Mr. Reidy recalled that when the proposed code amendment was introduced to the Board on July 10th, City staff did not mention that the 2012 Planning Board was tasked by the City Council on two occasions to review this same item. Amendments were needed to clarify certain parts of ECDC 20.70 and make the wording consistent with State Law. He spoke at both of those public hearings (May 9, 2012 and November 14, 2012). The end result of this effort was that the City Council adopted Ordinance 3910, which made the City's laws more consistent with State Law (RCW 35.79.030). He questioned why the Planning Board is now being asked to consider a major rewrite of this code section. He said he is unaware of any changes to State law that makes this necessary. He asked who is pushing this effort that changes laws adopted by a previous City Council. For example, the either/or provision is legal under State Law, and the City Council made a legislative choice to establish that law. Why is staff now proposing that the either/or law be eliminated. It is good law that the citizens support. He asked that the Board recommend that the either/or provision be left intact.

Mr. Reidy asked why the proposed code amendment has been in the works since at least May 3, 2018 without an opportunity for property owners or citizens to be involved in the process. He noted that Ordinance 3910 clarifies the type of easements the City may retain when deciding to vacate a street or alley easement. The City Council may reserve rights for the City for construction repair and maintenance of public utilities and services, which is consistent with State Law. Ordinance 3910 does not say that the City Council may require property owners to grant rights to third parties, yet the Edmonds City Council

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has required property owners to grant easements to third parties during the last three street vacations. Instead of correcting their historical acts, he fears the City is attempting to change the code to promote similar acts in the future. He said he is not aware that any property owner has asked for this change. He pointed out that Ms. McConnell's reference to a recent street vacation that required a \$28,800 compensation failed to mention that the property owner was also required to grant an easement to the Edmonds School District for an unpermitted pipe they had put in years ago. He cautioned against the City elevating third-party rights above those of the property owner.

Mr. Reidy referred to the proposed language in ECDC 18.55.140.B.3, which states that, "*Any challenge to one or more conditions imposed pursuant to a resolution of intent to vacate must be brought in Snohomish County Superior Court no later than 30 days following the adoption of the resolution of intent. If such a challenge is successful, the city council shall determine whether to amend the resolution of intent by adopting a different set of conditions or to deny the street vacation in its entirety.*" He said RCW 35.79.030 does not say anything about a 30-day challenge period. It simply says that "*such ordinance may provide that the City retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair and maintenance of public utilities and services.*" Mr. Reidy stated that it is not the property owner's job to see that all laws and ordinances are faithfully enforced; that is the Mayor's job. Shifting the burden to others by giving them 30 days to challenge the City Council's required conditions is very wrong and unfair. It should be kept simple to comply with State and City Laws. The City Council can retain an easement or rights. Retain means to keep possession of, but it does not mean that the City can require property owners to grant easements to third parties.

Mr. Reidy pointed out that street vacations are legislative acts. He asked what would be the next legislative act that someone tries to make subject to a 30-day appeal period to Snohomish County Superior court if the proposed amendments are adopted. He commented that the courts do not want to be involved in the legislative process. Legislative acts are the City Council's responsibility and the City Council should be able to act within the law without involving the Superior Court.

Mr. Reidy recalled that at the Board's July 10th meeting, City staff explained that if there was thought to be value to the land and an appraiser found value to the property, the City would not be able to just gift public land to an adjacent property owner. However, Ordinance 4143, effective February 20, 2019 did not require compensation even though the related appraisal showed the property had value. This was perfectly legal, as requiring compensation is permissive. The statement about gifting of public land is alarming for several reasons. It shows that City staff tasked with updating the code section may not have a complete understanding of this area of law. History shows that the City has not required compensation on many occasions. If gifting public land was not something the City was able to do, why would it have done so earlier this year? He suggested that gifting is not an issue because the property owner almost always owns the title. If the street or alley has been part of a dedicated public right-of-way for less than 25 years, State Law allows the City the option of requiring compensation in an amount which does not exceed one-half the appraised value of the area so vacated. He questioned why the other half wouldn't be considered a gift of public funds or a windfall? Resolution Number 1145 documents that the City Council voted to credit back costs, including the cost of the appraisal, to the abutting property owner by reducing the required compensation by \$3,750. Should this be considered a gift or a windfall? He asked the Board to appreciate that compensation is permissive. He asked why City Attorney Taraday is talking about a potential windfall if payment is not required. The City Council has great legislative discretion, and they don't have to require compensation ever. In fact, since 1998, the City Council has not required compensation for most street vacations. For example, there were 15 street vacations in 1998 and none required compensation. History proves that it can be a public benefit to vacate streets without the need to require compensation.

Mr. Reidy referred to City Attorney Taraday's memorandum, which also states that payment for a street vacation would benefit the general public. He questioned if the general public would have legal standing to contest a street vacation if the City Council did not require compensation? He referred to Grays Harbor 2000 vs. the City of Seattle, in which the City of Seattle vacated 15.2 acres of streets and did not charge compensation. Citizens appealed the decision, saying they were harmed as part of the public because the City did not charge compensation, but the judge ruled that they didn't have standing to contest the decision. He emphasized that the City and property owner have higher rights than the general public. Mr. Reidy commented that State Law is clear that the respective rights of the City and property owner are not absolute, and case law is clear that the property owner, and not the general public, has the right to use unopened streets and alleyways.

In conclusions, Mr. Reidy expressed his belief that staff's comment that the City would not be able to just gift public land to an adjacent property owner indicates that they do not have a keen understanding of the law. If such a major code rewrite was needed, he asked why the citizens were not made aware of it? He recalled that in late 2016, he pointed out in a public hearing

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on a street vacation that acquiring an appraisal so early in the process was wrong. He is glad the proposed amendment will address this issue, but in general, the existing code is good. It was just reviewed in 2012 and it remains solid. He suggested the best approach would be to leave the recently updated code as is, with just the one change to move the appraisal requirement to later in the process. He asked the Board not to move away from the legislative intent of the City Council that adopted the either/or law and compensation law that didn't go for the full appraisal value. There is no need to change the choices that were made in 2012.

At the request of Board Member Pence, Mr. Reidy submitted his statement in writing.

Fennis Tupper, Edmonds, said he has been a resident of Edmonds for 39 years and his property was part of George Brackett's original plat. His northern boundary line was the northern boundary of the City, and there is a 7.5-foot undedicated alley easement in his backyard. He noted that the street code requires 15 feet, but when the City annexed the Holy Rosary property to the north of his property, it did not require them to dedicate the other 7.5 feet. If you view the property on Google Maps or the City's GSA maps, you will see that almost every property owner has put up a fence and incorporated the 7.5 feet into their lots. In the 39 years he has lived in the City, he has witnessed many street vacations, especially in his neighborhood. For example, some of 8th Avenue that was never going to be opened because of a stream was vacated. A 7.5-foot easement between 8th and 9th Avenues was also vacated with no compensation required.

Mr. Tupper referred to Mr. Reidy's earlier question about why it would be okay to give away half of the public's funds by not charging the full amount. It is just not a valid legal argument. He said he watched the July 10th Planning Board Meeting on Channel 21 and was flabbergasted at some of the testimony that was provided by staff. He visited the Municipal Research Service Center's (MSRC) website (www.msrc.org) for additional clarification. The MSRC is a non-profit organization that helps local governments across Washington State to better serve the citizens by providing legal and policy guidance on any topic. He learned that a public right-of-way is generally an easement, and when the right-of-way is vacated, the fee title to the property underlying the right-of-way held by the abutting property owner becomes unencumbered by the easement. What the vacation accomplishes is extinguishment of the right-of-way easement. Ms. McConnell said that abutting property owners cannot use the easement because the City has jurisdiction over it. However, per the MSRC, if the right-of-way has not been opened and is not improved, the obstruction of public travel is not an issue and the property owner is not subject to the same restrictions as when it is opened and improved. Typically, property owners can use the unopened, unimproved right-of-way as they can the rest of their property, but it is subject to the possibility of it being opened and improved at some point in the future.

Mr. Tupper also referenced Ms. McConnell's statement that if there was thought to be value to land and an appraiser did find value to the property, the City could not just gift it to an abutting property owner. However, it is important to note that the City does not have title to the property. It only has an easement right, which is just one stick (right) in the bundle.

Mr. Tupper said that about six years ago he discovered that the Lighthouse Law Group's corporate registration with the State had lapsed and hadn't been paid for or renewed. After discovering that, he went to the City of Seattle's website and found that the law firm, which had been formed about five years earlier, had never applied for a City of Seattle business license or paid City of Seattle taxes. He asked Mr. Taraday for a copy of his business license, and he told him it had lapsed. However, the following day he was down at the City of Seattle applying for the license. There is something about integrity and truth, and telling him that the license had lapsed was very untruthful.

Michelle Dotsch, said she was present at the last meeting and heard Mr. Reidy address the Board. She was born and raised in Edmonds and knows there are a lot of alleys that people walk and bike through. She recalled that City staff displayed a map at the last meeting that showed an alley in just one area, but a short Google search located a variety of Google Map photographs of local streets with unopened easements. In many of these situations there is landscaping, buildings, fencing, etc. She submitted maps showing where all of the easements are located, noting that some have access to driveways to actual parking garages on the backside with no access for vehicles on the front side. The owners of these properties would be significantly impacted by the proposed amendments, yet there are only two public hearings during the summer when people are out of town. It is easy to do a Google Map search to find the property owners. She expressed her belief that the process needs more time and attention. The City needs to reach out to the public by mailing notices to affected property owners.

Chair Cheung closed the public comment portion of the hearing.

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Board Member Monroe advised that Board Member Rubenkönig was unable to attend the meeting but submitted a written comment asking about the impetus of staff's proposal to update the street vacation provisions. City Attorney Taraday explained that as staff has worked through street vacations over the past few years, it noted provisions that were either not as clear as they needed to be or not as helpful to the City as allowed by State Law. He disclosed that he represents the City of Edmonds and his responsibility is to advance the interest of the City of Edmonds and not individual property owners. If he sees that State Law allows the City of Edmonds to collect more money for a street vacation than it is currently collecting, it is his job, as the City Attorney, to make that option available to the policymakers and let them decide whether or not they want to amend the code. The City is leaving money on the table right now. He feels an obligation to bring that forward and let the policymakers make a decision about whether that is a good thing or not.

Board Member Monroe noted that, as proposed, the city attorney would provide an analysis of an appraisal. City Attorney Taraday said that is one option. He spent a lot of his career doing imminent domain work and deposing appraisers. Board Member Monroe pointed out that the proposed amendment does not say that Jeff Taraday will provide an analysis, it simply says that whoever is the city attorney would do the analysis. City Attorney Taraday expressed his belief that most city attorneys would be able to do that work. Board Member Monroe observed that, as per his earlier statement, City Attorney Taraday is charged with advancing the City's interest and not that of private property owners. City Attorney Taraday said he would provide an analysis to the City Council, and the City Council Members are also tasked with representing the City of Edmonds and looking out for the City's interest. He asked who better to advise the City Council than the person who has the fiduciary duty to look out for the interest of the City of Edmonds.

Ms. McConnell explained that the proposed amendments are intended to clarify and address issues that have come up over the past few years as staff worked through street vacation applications. As proposed, the restructured process would be smoother to follow and easier for the staff and public to understand the requirements. Moving the appraisal to a later point in the process after the Resolution of Intent to Vacate has been approved will benefit petitioners so they don't spend money up front on something that may have no traction. The provisions were looked at holistically and are intended to address issues that kept coming up as staff dealt with residents coming to the front counter.

In an effort to be transparent, City Attorney Taraday said the intent behind the current either/or provision is unclear to him. They could review the legislative history and try to identify the intent, but there is not always a clear answer for why a provision was adopted into the code. However, it is completely arbitrary to try and equate the reserving of a simple easement to the City on one hand and fair market value payment for the street vacation on the other. For example, you could have a huge street vacation worth a lot of money, but if the City happens to have a small water line there that requires the preservation of a small easement, the existence of the water line could create a completely arbitrary condition where the City either needs to vacate the street cost free, reserve the easement or deny the street vacation. Denying the street vacation request is not in the property owner's best interest. It is important to create conditions that allow street vacations to come forward, and the either/or provision forces the City to make a difficult choice between three options that are not good. Eliminating the either/or provision could create a situation where a reserved easement could end up reducing the amount of compensation that a property owner is required to pay. On the other hand, retaining the either/or provision would prohibit the City from requiring compensation if any portion of the easement is reserved.

Board Member Crank said her initial understanding was that the proposed amendments were intended to catch the City's code up with the State Law, but it appears that has already been done. She asked if the true intent is to collect the money that is being left off the table and put it into the City coffers. If that is the case, it is important that the intent is clear so that the Board doesn't continue its conversation thinking they are trying to catch up with something that they have already caught up to. Secondly, she asked if there is a timing issue that requires that the Board's recommendation be forwarded to the City Council for a September public hearing.

City Attorney Taraday reviewed that the focus of the 2012 update was fairly narrow and not intended to be a full rewrite of the street vacation code. One reason it has taken so long to bring the proposed update forward is that, frequently in City government, there is too much to do and not enough time and resources. Projects end up getting re-prioritized. It took a while for staff to realize that the full appraised value provision was not in the code. Rather than doing piecemeal amendments to the code, staff felt it was better to wait until they could do a complete rewrite of the entire chapter.

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Ms. McConnell said that once staff starts a project, they try to keep it moving. They are pulled to a variety of different projects, and staff availability to work on projects is limited. The larger the gap is in between, the more time it takes staff to sync back into the project and bring it forward again. The tentative public hearing before the City Council on September 17th is purely an effort to keep the amendment moving forward while the issue is fresh on everyone's mind.

Regarding the issue of retained easements by either the City or another agency, Board Member Pence commented that petitioners are asking the City to give the bundle of sticks back to the abutting property owners. The retention of an easement is the City merely saying that one of those sticks will have to be retained in the public interest. The petitioner would still have all the rights to use the land subject to the easements that are retained, and this will have an impact on the appraised value of the parcel. He doesn't see retained easements as an issue at all since they are part of the reality of the process.

Board Member Pence questioned the use of the term "third-party appraiser," since it has not been referenced in the conversation. Currently, the appraiser is chosen by and becomes a client of the petitioner. Under the proposed amendment, the City would select the appraiser and that appraiser would be a servant of the City. There would be no third-party involvement in the proposed process. However, there may be some merit in having third-party appraiser who is truly independent of both the City and the petitioner. He said he has been involved in public property acquisition issues through condemnation, and the agency has its appraiser and if the unwilling seller doesn't like the appraisal, he/she hires a different appraiser. The issue goes to court and the differences are adjudicated. He suggested that for smaller-scale issues, it would be more appropriate to have just one appraiser that both sides select from a list of qualified appraisers. This would save expense, if nothing else. Again, he said the use of a third-party appraiser is not properly chosen in the proposed amendments.

Board Member Rosen asked if he understood correctly that, as proposed, the petitioner would be required to pay for the appraisal. If the petitioner disagrees with the appraisal, he/she would be required to pay for the second appraisal, too. City Attorney Taraday said that is one of the options for addressing the Board's initial concern about the appraisal process. From his perspective, it would not make sense for the City to pay for an appraisal unless the street vacation was initiated by the City Council. Board Member Rosen suggested that the better distinction would be for whoever initiates the street vacation to pay for the appraisal.

Board Member Rosen voiced concern that the proposed amendments might set the City up for some unintended consequences. He asked how the City could reduce that risk. City Attorney Taraday responded that the proposed amendment would not have any impact on rights that abutting owners have to use streets, whether opened or unopened. From his perspective, it has always been the case that if you want to build something in a street, you have to get an encroachment permit from the City. They are not making any changes regarding City policy on that issue.

Board Member Monroe asked if the conditions attached to a street vacation approval could require a petitioner to obtain an agreement from a third-party utility. City Attorney Taraday explained that the City can never be compelled to approve a street vacation. It can deny the request at any time for any reason. In addition, the City is a code city organized under Title 35.A, which is different than other types of cities that exist in the state. Code cities have the broadest possible powers under the Washington State Constitution. Code cities are home ruled cities in that they don't need to point to something that is expressly stated in State Law to authorize their actions. They just can't contradict State Law. As long as they aren't violating the statute, they are good. He cannot point to a specific State Law that requires petitioners to obtain agreement from third-party utilities, other than Title 35.A, which grants code city home rule authority. Board Member Monroe summarized that the answer to his question is yes, the City can require a petitioner to obtain agreement from a third-party utility.

Board Member Monroe asked why the timeline for challenging a street vacation is 30 days and not a longer time period. City Attorney Taraday referred to the case, King County vs. Federal Way, where a street vacation was challenged. The issue in that case was whether or not the challenge was timely. The court determined that when challenging a street vacation under a declaratory judgment action, the action must be brought within a reasonable period of time. The court ultimately held that 30 days was the appropriate time period. He expressed his belief that it is not fair to citizens to make them guess about how much time they have to file a challenge. It is a lot more transparent to put the timeline in the code. Because a timeline is not set forth in the RCW, the City has the authority to decide what the reasonable time period is, but it must be a reasonable period of time to get something before the court and before a street vacation has been finalized and the ordinance adopted. Board Member Monroe voiced concern that it might be difficult for a property owner to get everything in order in that short amount of time.

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Board Member Monroe reiterated that the City takes all but one of the sticks when a property is subdivided. If a property owner asks for them back, the City will determine what they are worth and require the property owner to provide compensation. In addition, the City may decide to give only some of the sticks back and hold onto others sticks for some type of public use. The petitioner would have 30 days to challenge the City's decision. Again, he asked if the City would require a petitioner to obtain an agreement with a third-party utility if an easement is to be retained. Ms. McConnell answered that the petitioner would be responsible for contacting the utility and working out the easement agreement and this would be spelled out as part of the condition process. That is why 90 days might not be enough time, and the ordinance might establish a longer time period as appropriate.

Board Member Monroe commented that City Attorney Taraday and Ms. McConnell are doing a great job of maximizing City revenue wherever possible, and that's what the amendments are about. However, that is not something the Planning Board is has to do. City Attorney Taraday cautioned that this is not a type of taxation. In the case of a street vacation, the City is transferring valuable property rights at a price that has been agreed upon by a professional appraiser. It is not an unfair transaction. Board Member Monroe observed that the City has a lot of power and discretion in these transactions. City Attorney Taraday agreed, but in all of his years doing imminent domain and other types of appraisal work, he has never seen a situation where a city tries to low or high-ball an appraisal. In the grand scheme of the budget, the City won't be motivated to game the appraisal process to get an extra amount of money. Money matters a lot more to the smaller guy. Board Member Monroe referred to City Attorney Taraday's earlier comment that sometimes the City receives a low-ball appraisal, and he would provide an analysis to the City as to what appraisal is the most accurate. City Attorney Taraday said his analysis would be informed by many years of working with appraisals.

Board Member Monroe commented that as long as necessary easements are retained, the City would not be impacted by a street vacation. The land belongs to the property owner and not the City, and the City needs to show a reason to use it. If the City isn't using it, the rights, by default, should be given back to the property owner. As long as the City would not be damaged by the transaction, it is incumbent on the City to make it easy and cheap. He said he likes the current either/or language, which protects the City from damages, and he also likes the proposal to move the appraisal to later in the process. All of the other amendments are unnecessary, especially if the primary intent is to get more revenue for the City. In particular, he does not like the 30-day timeline for challenging a street vacation, and he does not like the proposed appraisal process.

City Attorney Taraday said he understands that the appraisal language is controversial, and a policy decision will need to be made. The Board's task is to make a recommendation to the City Council on the policy question, and the City Council will make the ultimate decision. However, aside from this policy question, the other proposed amendments are needed to clarify the process and should be considered on their merit. Regarding the 30-day timeline for challenging a street vacation, City Attorney Taraday suggested that it is better for the City Council's constituents to know what the timeline is rather than having to guess. He recommended that a timeline be clearly established in the code, and he suggested the Board discuss what might be a better period of time. Board Member Monroe expressed his belief that the timeline should be longer to allow sufficient time for a petitioner to gather the needed information to issue a challenge.

Vice Chair Robles said he really appreciates City Attorney Taraday's transparency that his job is to represent the City. However, the Board's job is to represent the citizens. He also appreciates the working relationship that exists between the staff and the Board. However, if the Board advised the citizens that the purpose of the proposed amendments is to raise revenue for the City, he suspects that people who aren't land owners would support the change, but those who own land would not. There are too many questions at this time for him to formulate a recommendation to the City Council. It will take more work to get enough information to get to the right solution. The City's broad powers need to be carefully checked to figure out how they impact the citizens. He voiced concern that the proposed amendments are based upon the Fee Simple Bundle of Rights analogy, which cannot be codified. There needs to be a basis of logic for the code, and if they need to have a valid analogy to explain a proposed code amendment, it needs to be reconsidered.

Board Member Rosen summarized that the City Council is looking to the Board for guidance. It appears that the Board agrees with the following:

- Retain the current either/or provision.

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- Change who pays for the original appraisal based on who initiates the request.
- Move the appraisal to later in the process.
- Increase the timeline for challenging a street vacation to something greater than 30 days.

Board Member Monroe asked if the Board had reached a consensus on who would choose the appraiser, the petitioner or the City. Vice Chair Robles responded that the City cannot expect to clean the process up with a third-party appraisal. It will be a messy process and negotiations will be required. If there is an appeal, Board Member Rosen asked if it would be possible to give the petitioner the option of either finding his/her own appraiser or using another appraiser from the City's list. Board Member Crank asked if there are other cities in Washington State that have addressed the appraisal issue. It might be helpful to find out what processes other cities are using as opposed to grasping for their own ideas. City Attorney Taraday agreed that staff could research the processes employed by other cities and report back.

Chair Cheung commented that the person who is asking for the street vacation will obviously be interested in a lower appraisal. On the flip side, the City will pick an appraiser that will identify the highest value for the property. Because the authority is already with the City, if the applicant had an unreasonably low appraisal, the City could simply deny the petition. He said he doesn't see why the City needs to require a petitioner to choose an appraiser on the City's list. If they come in with an appraisal that is incorrect, the City can simply deny the petition, and the petitioner could then appeal the decision and select a different appraiser from the City's list. Vice Chair Robles pointed out that appraisers are all licensed and should be unbiased. City Attorney Taraday responded that appraisers are trained in different specialties, and the proposal is for the City to have a list of qualified appraisers who are trained to do street vacation work.

Board Member Rosen suggested the Board could forward the proposal to the City Council with a recommendation of approval with the following exceptions:

- Retain the either/or provision.
- Change who pays for the initial appraisal based on who initiates the request.
- Change the timeline for challenging a street vacation from 30 days to 60 days.
- Request that staff come up with a recommendation for alternatives to the appraisal process rather than requiring a petitioner to choose from the City's list of qualified appraisers.
- Encourage the City Council to specifically reach out to any resident who borders a project that might be impacted, notifying them of the upcoming public hearing.

Vice Chair Robles suggested that the Board's recommendation to the City Council should also make it clear that the objective of the proposed amendments is to raise additional funds for the City. Board Member Crank agreed that additional revenue is an underlying element the proposal, but not necessarily the intent.

Board Member Monroe suggested that the timeline for challenging a street vacation should be increased from 30 days to 90 days. City Attorney Taraday commented that, whatever the timeline is set at, the City won't be able to adopt street vacation until 30 days after the timeline has expired. Some constituents will want a street vacation to happen more quickly. Board Member Rosen asked if a petitioner could waive his/her right to appeal, which would then shorten the process. City Attorney Taraday agreed this is an interesting concept. He can imagine certain street vacations where it would be clean and easy for a petitioner to waive the right to appeal, but if several property owners are involved in the petition, it could be more difficult. The Board agreed they would like to add an option to waive the right to appeal if possible.

The Board discussed retaining the current code language that would allow the City to accept either monetary compensation or reservation of an easement. The proposed new language would allow the City to require both. Board Member Monroe commented that a street vacation would not damage the City in anyway, as long as the necessary easements are maintained. City Attorney Taraday clarified that the current code only prevents the City from collecting compensation if the easement is for the City, but if the City directs a petitioner to work out an easement with a utility, the City can collect compensation, too. Board Member Monroe suggested this provision needs to be changed. From the petitioner's point of view, it shouldn't make any difference whether the easement is for the City or a utility. City Attorney Taraday agreed it doesn't make sense, but rather than treat all easements equally, the intent of the amendment is to evaluate the effect of the easement on value and subtract that amount from the required compensation. He cautioned against a provision that would result in the City's

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inability to collect compensation if there is any condition involving retention of an easement for any party. Currently, only an easement to the City would ban other compensation. He explained that, currently, it is difficult for appraisers to take easements into account because appraisals are done before easement conditions are imposed. The proposed amendment would move the appraisal to later in the process so that easements can be taken into account when determining the correct compensation.

Board Member Pence summarized that, if a petitioner does not get all of the sticks (rights) back and some are being reserved for a public purpose, it really shouldn't matter whether that public purpose is the city or some other public entity. The sticks (rights) that don't get turned back to the petitioner can all be accounted for in the appraisal. City Attorney Taraday explained that the City needs some motivation to approve a street vacation. He explained that it is not possible for the Board to know what the City's future needs will be with respect to all of the streets and easements. He said he considers easements to be valuable rights, and simply giving them away could result in significant public cost in the future. Chair Cheung commented that if the City wasn't able to collect compensation for street vacations, perhaps it would be more cautious about giving up easements.

Board Member Crank commented that recognizing the monetary aspect of street vacations is neither good nor bad, it just is. You always need to know what something is valued at whether you end up giving it away for free or not. She recommended against spending too much more time talking about this aspect of the proposal. She suggested they move forward with discussions on the other elements of the proposal and then make a recommendation to the City Council. Vice Chair Robles expressed his belief that the City Attorney's position regarding the monetary aspect of the proposal should be articulated to the public.

Board Member Pence said he would like staff to provide feedback in writing, responding to the public comments and the Board's conversations. The proposed amendments could be tweaked to represent more of a consensus and the Board could discuss the updated proposal at their next meeting. He said he is not comfortable sending a recommendation to the City Council now. Chair Cheung agreed and noted that the Board is particularly interested in increasing the timeline for challenging a street vacation from 30 days to 60 days and perhaps adding a provision that would allow a petitioner to waive the appeal period. There are also some outstanding questions regarding the provision that would allow the City to collect compensation and require that an easement be reserved.

City Attorney Taraday agreed to work with staff to prepare an updated version of the proposed amendment that incorporates the thoughts expressed by the Board. However, it will take more time for staff to update the document. He summarized that there are some items that appear to have majority support. Where there are still issues, he agreed to provide alternative language for the Board's consideration. The Board could continue their deliberation in October based on an updated draft.

Chair Cheung closed the public hearing.

REVIEW OF EXTENDED AGENDA

Chair Cheung advised that the August 28th agenda will include an update on the Vision 2050 Multicounty Planning Policies and a presentation on the RoadMap Project (Ruckelshaus Center Report). The September 11th meeting is scheduled as a joint meeting with the Architectural Design Board and an update on the Urban Forest Management Plan. The Board will continue its deliberations on the Street Vacation Code Amendments on October 9th.

PLANNING BOARD CHAIR COMMENTS

Chair Cheung announced that some parking issues will be coming before the Board, so it is important for them to keep apprised of what is happening with the parking study, etc.

PLANNING BOARD MEMBER COMMENTS

Board Member Monroe reported that he attended the kickoff meeting for the parking study, which was well attended and informative. At this time, they are working to identify a framework for the study.

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SUBJECT TO SEPTEMBER 25TH APPROVAL**CITY OF EDMONDS PLANNING BOARD
Minutes of Meeting****September 11, 2019**

Chair Cheung called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Matthew Cheung, Chair
Daniel Robles, Vice Chair
Todd Cloutier
Nathan Monroe
Roger Pence
Mike Rosen
Conner Bryan, Student Representative

STAFF PRESENT

Rob Chave, Development Services Manager

BOARD MEMBERS ABSENT

Alicia Crank (excused)
Carreen Nordling Rubenkönig (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER ROSEN MOVED THAT THE MINUTES OF AUGUST 28, 2019 BE APPROVED AS PRESENTED. BOARD MEMBER CLOUTIER SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

Ken Reidy, Edmonds, commented that the Street Vacation Code Amendments will come back before the Board on September 25th. He recalled that City Attorney has stated that the starting point in analyzing conditions is that the City can never be compelled to approve a street vacation but can deny the request at any time for any reason. However, if a proposed street vacation is in the public interest and no property will be denied direct access, he questioned if the City can really deny a request at any time for any reason. He pointed out that City code allows property owners to apply for street vacations, and a fee is required. When an application is made and paid for, he felt it should be processed per the City's code. He said the City's General Code of Conduct states that "*the City's primary function is to provide service to the citizens of Edmonds.*" The City's Code of Ethics says that "*elected officials shall emphasize friendly and courteous service to the public and each other and seek to improve the quality of public service and confidence of citizens.*" He said his hope is that any and all updates to the street vacation code will lead to improvements in the quality of service provide by the City. He questioned if the- City Council can condition a street vacation on the granting of an easement to a third party.

Mr. Reidy recalled that at the Board's August 14th meeting, the City Attorney stated that, as a home rule city, the City has broad powers. He further stated that *"the City doesn't need to point to something that's expressly stated in State Law to authorize its actions; it just can't contradict State Law."* In other words, as long as the City isn't violating the statute, it's good. Mr. Reidy pointed out that State Law clearly says that the ordinance may provide that the City retain an easement or rights, and the definition of retain is clear and simple. He expressed his belief that the City is violating State Law when it does something other than retain. Mr. Reidy agreed that the City has broad powers. However, once the City exercises its broad powers, the code adopted by the City Council must be followed by the City Attorney and City staff. The adopted code must also be faithfully enforced by the mayor.

Mr. Reid recalled that, at the last meeting, he mentioned that the 2012 Planning Board was involved in an amendment that added language regarding the types of easements that may be retained during a street vacation. Ordinance 3910 clearly states that easements or rights may be reserved for the City. It doesn't say for third parties. The City Attorney is required to approval all ordinances as to form, and Mr. Taraday signed Ordinance 3910. The 2012 Planning Board was also involved in another amendment to the street vacation code. Ordinance 3901 required a description of any easement under consideration to be retained by the City. This ordinance uses the same word (retain) that the State Law uses. He summarized that Ordinance 3901 does not require a description of any easement that the City wants to grant to a third party. If such was legal and if the City Council wanted to do so, Ordinance 3901 would have required a description of those easement, as well. This was not an oversight by either the 2012 Planning Board or the 2012 City Council, and Mr. Taraday also signed Ordinance 3910. Both of the ordinances show that the Edmonds City Council has adopted City laws that do not involve property owners granting easements to third parties. He questioned why the City's laws would allow such. Wouldn't requiring rights to be granted to a third party be a gift to that third party? Do third parties and/or the general public even have legal standing to contest a street vacation? He said he has never seen dedication language that says if the City doesn't use the easement for a public use, it can convey rights to a third party instead.

Mr. Reidy commented that both the City Attorney and City staff are able to point to something that is expressly stated in the City's own code to see what actions are authorized. It's simple, the City can retain rights for the City. Previously-elected City Council Members decided that when the City retains an easement, it will not require compensation. It is either/or. He expressed his belief that the either/or law improves citizen confidence in City government and stating that the City can never be compelled to approve a street vacation does the opposite. Title 21 of the City's code defines a dedication as a gift, and charging compensation to vacate an easement that was gifted doesn't make sense to him and such conduct is arbitrary.

Regarding rights to be granted to third-party utilities, Mr. Reid said it is best to do what the code allows, reserve for the City any easements or rights needed. The City used to do it this way, as evidenced by Ordinances 3188 and 3202. He expressed his belief that an easement is superior to rights that utility companies have under a franchise contract. For example, franchise contracts often require a franchise fee, have terms and can expire. Requiring easements to be granted to utilities may be another gift. Mr. Reidy concluded his comments by asking the Board to remind City staff to bring the aerial photo the Board requested during its July 24th meeting to the September 25th.

DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD

Chair Cheung referred the Board to the Development Services Director's Report that was provided in the packet. There were no comments or questions from the Board.

CONTINUED DISCUSSION OF ARCHITECTURAL DESIGN BOARD (ADB) ROLES AND SCOPE

Mr. Chave reported that the ADB had a lengthy review of a project at their last meeting, and they didn't have time to discuss their role in design review and finalize their recommendation to the Planning Board. Hopefully, they will be able to do so at their October 2nd meeting. He suggested that, when the Board meets jointly with the City Council, it would be appropriate to mention that they are working with the ADB on this item.

DISCUSSION ON JOINT CITY COUNCIL AND PLANNING BOARD MEETING

Chair Cheung advised that the Planning Board will meet jointly with the City Council on September 24th, at which time the Board will advise the City Council of their work with the ADB regarding their role in design review and potential changes.

DRAFT

Planning Board Agenda Item

Meeting Date: 09/25/2019

Review Planning Board Extended Agenda

Staff Lead: N/A

Department: Planning Division
Prepared By: Diane Cunningham

Background/History

N/A

Staff Recommendation

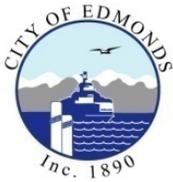
N/A

Narrative

The extended agenda will be reviewed at the meeting.

Attachments:

09-25-2019 PB Extended Agenda



PLANNING BOARD
Extended Agenda
September 25, 2019

Items and Dates are subject to change

Meeting	Item
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SEPTEMBER, 2019

September 24	PB/Council Joint Meeting
September 25	1. Continued deliberations on proposed Street Vacation Code Update Chapter 20.70 ECDC

OCTOBER, 2019

October 9	1. Joint Meeting with ADB: Design Review discussion 2. VISION 2050 Multicounty Planning Policies Update (next steps in PSRC process) 3. Presentation on CIP/CFP 2020 – 2025
October 23	1. Housing Commission Update 2. Public Hearing on CIP/CFP 2020 - 2025

NOVEMBER, 2019

November 13	1.
November 27	1. HOLIDAY

DECEMBER, 2019

December 11	1.
December 25	1. HOLIDAY

Attachment: 09-25-2019 PB Extended Agenda (Review Planning Board Extended Agenda)

Items and Dates are subject to change

Pending 2019	<ol style="list-style-type: none"> 1. Community Development Code Re-Organization 2. Further Highway 99 Implementation, including: <ul style="list-style-type: none"> ✓ Potential for “urban center” or transit-oriented design/development strategies ✓ Parking standards 3. Exploration of incentive zoning and incentives for sustainable development
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Current Priorities	
1.	Neighborhood Center Plans & implementation.
2.	Highway 99 Implementation.

Recurring Topics	<ol style="list-style-type: none"> 1. Election of Officers (1st meeting in December) 2. Parks & Recreation Department Quarterly Report (January, April, July, October)
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